

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

TRANSCRIPT OF RESENTENCING HEARING
BEFORE THE HONORABLE LEE YEAKEL

Proceedings recorded by computerized stenography, transcript
produced by computer.

EXAMINATION INDEX

EDMOND MARTIN

DIRECT BY MR. HARDING	6
CROSS BY MS. WILLIAMS	59

EXHIBIT INDEX

Government

OFFD/ADM

1-2

4 5

09:10:58 1 (Open court)

09:10:58 2 THE COURT: We're here today for a sentencing hearing
09:11:00 3 in Cause Number 99-CR-274, *United States v. Gary Paul Karr*.

09:11:07 4 Let me get announcements by the parties, beginning
09:11:11 5 for the government.

09:11:13 6 MR. HARDING: Good morning, Your Honor. Matt Harding
09:11:14 7 and Dan Guess for the United States.

09:11:15 8 MR. ALDREDGE: Good morning, Your Honor.
09:11:16 9 Horatio Aldredge and Christie Williams for Mr. Karr.

09:11:19 10 THE COURT: All right. Are you-all ready to proceed?

09:11:22 11 MR. HARDING: Yes, Your Honor.

09:11:23 12 MR. ALDREDGE: Yes, Your Honor.

09:11:23 13 THE COURT: Okay. As you know, we're in the middle
09:11:27 14 of the plague, and so we will comply with the distancing
09:11:37 15 guidelines that are in effect for this building, which is
09:11:41 16 basically six feet apart -- it looks like we're in pretty good
09:11:45 17 shape right now -- and the mask rules, because we're not out of
09:11:49 18 the woods yet in this thing.

09:11:52 19 So, because we'll be masked, everybody who speaks, I
09:11:56 20 want you to make sure you speak very clearly and slowly and
09:11:59 21 annunciate, because there's a little bit of adjustment we've
09:12:03 22 got to make. And the lawyers don't have to come to the front
09:12:09 23 podium. You can speak at the podium at your respective tables
09:12:13 24 there. And so that's what we will do.

09:12:19 25 I don't know if you-all have discussed how you want

09:12:23 1 to proceed with this. Of course, the burden is on the
09:12:27 2 government at sentencing. So, Mr. Harding, I presume you're
09:12:31 3 ready to proceed?

09:12:32 4 MR. HARDING: We are, Your Honor.

09:12:33 5 THE COURT: All right. I apologize to everybody for
09:12:35 6 the delay. My computer on the bench decided to die this
09:12:41 7 morning, which we have many more computer deaths than one might
09:12:45 8 think. I know I'm the old person and the outlier, but I liked
09:12:51 9 all of this better when all we had were legal pads and pens to
09:12:54 10 deal with everything, and we actually handed pieces of paper
09:12:57 11 around. So, in that regard, I appreciate the binders that I've
09:13:01 12 received from you-all with the things we're going to consider
09:13:04 13 this morning.

09:13:04 14 So, that having been said, Mr. Harding, the
09:13:08 15 government may proceed.

09:13:10 16 MR. HARDING: Thank you, Your Honor. To begin with,
09:13:12 17 for record purposes, we would offer for purposes of this
09:13:14 18 hearing all of the attachments to the government's sentencing
09:13:17 19 memorandum as well as Government's Exhibits 1 and 2, previously
09:13:22 20 tendered to counsel and in the Court's binder, Exhibit 1 being
09:13:28 21 a PowerPoint presentation -- or in this case, actually, a PDF
09:13:31 22 presentation that we'd like to go over with Agent Martin, and
09:13:34 23 Exhibit 2, which is some redacted e-mails between former AUSA
09:13:40 24 Jerry Carruth and some jurors in this case.

09:13:45 25 MS. WILLIAMS: Judge, I object to the testimony of --

09:13:48 1 the vast majority of the testimony of Mr. Martin and the vast
09:13:52 2 majority of this PowerPoint or PDF presentation as being
09:13:59 3 duplicative of the evidence at the trial which has already been
09:14:02 4 covered at the government's sentencing memorandum, as we
09:14:05 5 discussed in our conference.

09:14:08 6 THE COURT: Well, it may be duplicative of what was
09:14:12 7 presented at the trial and perhaps at the first sentencing
09:14:14 8 hearing, but I was not the trial judge in this case, and I was
09:14:17 9 not the sentencing judge in this case. And so I find it
09:14:23 10 harmless that it's duplicative. I think if this case goes back
09:14:28 11 to the Circuit or gets appealed in any manner, it will make for
09:14:33 12 a cleaner record if that appellate court is looking at what I
09:14:37 13 looked at at this time in reaching my decision, without having
09:14:42 14 to go back and paw through other things. So the objection is
09:14:47 15 overruled.

09:14:48 16 Government's Exhibits 1 and 2 are admitted, and the
09:14:51 17 Court will also accept and review all of the attachments to all
09:14:59 18 of the pleadings and memoranda that have been filed in
09:15:02 19 anticipation of this hearing that are before the Court, and I
09:15:05 20 will consider them for the purposes of whatever ruling I make.

09:15:10 21 MR. HARDING: Thank you, Judge. The government will
09:15:12 22 call Ed Martin at this time.

09:15:14 23 (Witness sworn)

09:17:32 24 MR. HARDING: May I proceed, Your Honor?

09:17:33 25 THE COURT: You may. Until we get to the next

09:17:40 1 interruption.

09:17:40 2 MR. HARDING: Mr. Martin --

09:17:43 3 MR. ALDREDGE: Your Honor, I apologize. I need to
09:17:43 4 have a quick discussion with my client.

09:17:44 5 THE COURT: All right.

09:17:45 6 (Counsel confers with defendant)

09:18:33 7 MR. ALDREDGE: Thank you, Your Honor.

09:18:34 8 THE COURT: Now, Mr. Harding.

09:18:35 9 MR. HARDING: Thank you.

09:18:36 10 **EDMOND MARTIN,**

09:18:36 11 having been first duly sworn, testified as follows:

09:18:36 12 **DIRECT EXAMINATION**

09:18:36 13 **BY MR. HARDING:**

09:18:36 14 Q. Mr. Martin, could you please briefly introduce yourself to
09:18:39 15 the court, tell them what you do now, what you did back in 1995
09:18:44 16 and 2000, and describe briefly your role in the investigation
09:18:49 17 of this case.

09:18:50 18 A. Yes, sir. My name is Edmond Martin. I was an IRS special
09:18:54 19 agent for 26 years --

09:18:58 20 And I need to turn my phone off. Excuse me.

09:19:01 21 I was a special agent for 26 years. I retired in
09:19:09 22 2001. And I was, along with Donna Cowling, the case agents on
09:19:15 23 the Madalyn Murray O'Hair investigation, trying to find out --
09:19:20 24 follow the money and determine what happened to the \$600,000.
09:19:23 25 And we did that.

09:19:24 1 And since 2001 I have established a company, Sage
09:19:31 2 Investigations, a private investigating and forensic accounting
09:19:36 3 firm. And that's what I've been doing since then.

09:19:40 4 Q. And, in fact, you've done a little bit of work or
09:19:43 5 consultation with both the Federal Public Defender's office as
09:19:47 6 well as Ms. Williams; is that correct?

09:19:50 7 A. Correct.

09:19:50 8 Q. Okay. You've had chance to review the government's
09:19:53 9 sentencing memorandum in this case. Is that fair to say?

09:19:55 10 A. Yes.

09:19:56 11 Q. As well as the PowerPoint that's depicted in Exhibit 1 for
09:19:59 12 this hearing?

09:20:00 13 A. Yes.

09:20:01 14 Q. Fair to say the -- neither one of those contains all of
09:20:05 15 the facts in this case, right?

09:20:06 16 A. No.

09:20:06 17 Q. But, to the extent that they describe evidence in this
09:20:09 18 case, is that evidence fairly depicted, to the best of your
09:20:12 19 knowledge?

09:20:13 20 A. Yes.

09:20:13 21 Q. Okay. If we could turn to page -- or one of the
09:20:17 22 PowerPoint in Government's Exhibit 1, I just want you to
09:20:21 23 briefly, if you could, we're going to go group by group here,
09:20:26 24 can you first give the Judge just a very, very brief overall
09:20:29 25 picture of the scheme in this case? And we'll start with the

09:20:34 1 scheme, and then we'll go to the people.

09:20:35 2 A. Well, the scheme in this case was basically by Mr. Waters
09:20:42 3 and Mr. Karr and Dan Fry was to capture and abduct the --
09:20:49 4 Madalyn Murray O'Hair, Robin Murray O'Hair, and Jon Garth
09:20:54 5 Murray, and to obtain from them what they thought was about
09:20:58 6 \$1.2 million dollars which was in New Zealand and to bring that
09:21:02 7 money into the United States and take possession of it.

09:21:04 8 Q. Okay. And you described the victims in this case,
09:21:07 9 Madalyn Murray O'Hair, Robin Murray O'Hair, and Jon Garth
09:21:11 10 Murray. I'll just refer to them collectively as "the O'Hairs,"
09:21:16 11 if that's all right?

09:21:17 12 A. Correct.

09:21:17 13 Q. Fair to say the O'Hairs, in terms of their family
09:21:21 14 relationship, the actual relationship between them, it's a
09:21:24 15 little bit convoluted?

09:21:26 16 A. It is. But they were a very close family. I mean, they
09:21:28 17 traveled together, lived together, worked together.

09:21:30 18 Q. But can you describe for the Court the relationship, as in
09:21:33 19 mother, son, daughter between those three?

09:21:36 20 A. Correct. Madalyn was the mother, Robin was the daughter
09:21:42 21 of Bill Murray, which she was adopted by Madalyn, and
09:21:46 22 Jon Murray was the son of Madalyn Murray O'Hair.

09:21:50 23 Q. And Bill Murray is another son of Madalyn Murray O'Hair,
09:21:54 24 correct?

09:21:54 25 A. Yes.

09:21:55 1 Q. So Robin was biologically Madalyn's granddaughter but, by
09:22:00 2 adoption, her daughter?

09:22:02 3 A. Correct.

09:22:02 4 Q. Turning to the perpetrators in this case, you mentioned
09:22:04 5 David Waters, Gary Paul Karr, and Danny Fry?

09:22:07 6 A. Correct.

09:22:08 7 Q. Could you describe briefly the roles or the role and
09:22:11 8 relationship between those people? And starting with
09:22:13 9 David Waters, what was his role in this scheme?

09:22:16 10 A. In this particular instance, David Waters I would consider
09:22:19 11 would be the mastermind of it all, controlled the initial
09:22:23 12 thought of where they were going to do -- what they were going
09:22:25 13 to do. He was employed by Madalyn Murray O'Hair at one time
09:22:30 14 and the American Atheists, so he knew the ins and outs because
09:22:34 15 of being an office manager.

09:22:36 16 Gary Karr was --

09:22:38 17 Q. Before we go to Mr. Karr --

09:22:41 18 A. Sure.

09:22:41 19 Q. -- Mr. Martin ...

09:22:41 20 A. I'm sorry.

09:22:43 21 Q. You mentioned this, but David Waters -- you mentioned
09:22:45 22 earlier that they were trying to get a bunch of money,
09:22:48 23 \$1.2 million from New Zealand. It's your understanding from
09:22:52 24 the evidence in this case, that Mr. Waters came up with that
09:22:55 25 plan and knew of that money because of his former employment

09:22:58 1 with the O'Hairs; is that right?

09:23:01 2 A. That's correct.

09:23:01 3 Q. All right. I'm sorry. If you'll go on to Mr. Karr's role
09:23:04 4 in this offense.

09:23:05 5 A. So Mr. Karr was a bit player. He -- he had been released
09:23:09 6 from prison where he served 20 years and a few months and was
09:23:14 7 released in April of 1995. And he came to Austin, got involved
09:23:20 8 in the case, and, you know, I'm sure we'll explain all that.

09:23:25 9 So he was involved with Mr. Waters. I think he and
09:23:29 10 waters were friends, in that they both served in prison
09:23:35 11 together and they knew one another. And then Danny Fry was a
09:23:38 12 friend of David Waters that was from -- he was from Florida,
09:23:45 13 Naples, Florida. And he was, you know, a standard -- he was a
09:23:50 14 person, but he got himself involved in this situation.

09:23:52 15 Q. So a couple of questions, first about Mr. Karr. You said
09:23:55 16 that Mr. Karr and Mr. Waters befriended one another while they
09:24:00 17 were still in prison together. Based on the evidence in this
09:24:03 18 case, did that friendship persist not only throughout this
09:24:07 19 scheme but also beyond?

09:24:08 20 A. Yes, they did.

09:24:09 21 Q. Okay. Would you -- and you mentioned Danny Fry. And
09:24:15 22 Danny Fry, would you consider him to be on par in terms of an
09:24:20 23 equal partner with Mr. Karr and Mr. Waters or something less?

09:24:22 24 A. Something less.

09:24:24 25 Q. Can you remember how -- why David Waters explained he

09:24:30 1 involved Danny Fry at all during his interview?

09:24:32 2 A. He needed a third person to basically take care of things.
09:24:37 3 They couldn't always be there to be with the O'Hairs, and Danny
09:24:43 4 provided that service.

09:24:45 5 Q. And Mr. Waters considered -- according to his statement,
09:24:48 6 considered Mr. Fry expendable?

09:24:51 7 A. Expendable, yes, sir. That was one problem, yes.

09:24:56 8 Q. Of course, Mr. Fry, as we know, although a perpetrator of
09:24:59 9 this offense, was also eventually murdered as part of it as
09:25:02 10 well; is that correct?

09:25:03 11 A. Yes, sir. He was murdered.

09:25:05 12 Q. Moving on to the final two folks on the list here on
09:25:07 13 page 1, who is Gerald "Chico" Osborne, and how is he involved
09:25:11 14 in this case?

09:25:11 15 A. Mr. Osborne was also a friend of David Waters. He has an
09:25:15 16 extensive criminal record also, and he was one person that
09:25:20 17 David called on to allow the renting of a public storage unit
09:25:29 18 on Lamar.

09:25:30 19 Q. Okay. We'll talk about that later?

09:25:31 20 A. Yes.

09:25:32 21 Q. But in terms of -- although it may be suspected he had
09:25:34 22 more involvement, in terms of his known involvement and what he
09:25:37 23 was charged with, it was limited to that storage unit; is that
09:25:40 24 correct?

09:25:40 25 A. That's correct.

09:25:41 1 Q. Patti Jo Steffens, first of all, who is Patti Joe Steffens
09:25:46 2 in terms of relationship to these other folks?

09:25:49 3 A. She initially was Ron Waters', who is David Waters'
09:25:50 4 brother, girlfriend. And then she moved to Texas with
09:25:53 5 David Waters back in the '90s -- early '90s. And, basically,
09:25:57 6 she and David lived together for a number of years.

09:26:00 7 Q. And so, in fact, during the period of time in this case,
09:26:03 8 they were living together. Is that fair to say?

09:26:06 9 A. That's correct.

09:26:06 10 Q. At an apartment in Austin?

09:26:07 11 A. Yes, sir. In the Central Park Apartments, across from
09:26:11 12 DPS.

09:26:12 13 MR. HARDING: Okay. If we could move to the next
09:26:13 14 page, please.

09:26:14 15 Q. It's hard to see on the screen, but I think you can see it
09:26:17 16 on your screen better. Can you identify for the Court who
09:26:21 17 these folks are in slide 2?

09:26:22 18 A. Yes. The center person is Madalyn Murray O'Hair. The
09:26:26 19 gentleman on the right, or left in my case, would be Jon Garth
09:26:30 20 Murray. And then Robin was in pink. She was a young woman at
09:26:34 21 the time.

09:26:35 22 MR. HARDING: All right. If we could move to the
09:26:37 23 next slide, please.

09:26:40 24 Q. Who is depicted here in slide 3?

09:26:42 25 A. This is David Waters.

09:26:44 1 Q. And you can see at the bottom there's a description of
09:26:47 2 criminal history. Is it fair so say, without going into
09:26:51 3 detail, Mr. Waters has a criminal history that included
09:26:54 4 violence and other serious felonies?

09:26:57 5 A. Yes. He committed murder once.

09:26:59 6 Q. And is suspected of other murders, correct?

09:27:01 7 A. Yes.

09:27:01 8 Q. Including murders in this case?

09:27:03 9 A. Yes.

09:27:03 10 Q. Moving on to slide 4, can you describe briefly what's
09:27:07 11 depicted here in slide 4?

09:27:09 12 A. That's Mr. Waters shooting his Browning Hi-Power at the
09:27:13 13 Hill Country Range out off of Hamilton Pool Road. And he is
09:27:18 14 wearing his 1995 Pecan Street Festival shirt. That's how we
09:27:24 15 were able to date this particular photograph.

09:27:26 16 Q. And we're jumping ahead a little bit, but, in part, this
09:27:29 17 photograph is what led to or contributed to Mr. Waters being
09:27:33 18 charged with a firearms offense -- or federal firearms offense?

09:27:35 19 A. That's correct. And to pleading to that charge.

09:27:38 20 MR. HARDING: Okay. Moving on.

09:27:38 21 Q. Who is depicted here in this slide?

09:27:40 22 A. There is Mr. Karr, Gary Karr.

09:27:43 23 Q. And, again, Mr. Karr's criminal history is contained in
09:27:45 24 the PSR, so I don't want to belabor it. But is it fair to say
09:27:49 25 his criminal history involves violent conduct allegations and

09:27:53 1 convictions for rape and kidnapping?

09:27:54 2 A. Yes.

09:27:55 3 Q. Okay. Next page, who is depicted here, sir?

09:27:59 4 A. This is Danny Fry.

09:28:01 5 Q. And I want to point out or direct your attention to the

09:28:07 6 criminal history listed at the bottom of Mr. Fry's photograph

09:28:10 7 here. Is there a -- there's a big difference between his

09:28:13 8 criminal history, Mr. Fry's criminal history, and the criminal

09:28:16 9 history of Mr. Waters and Mr. Karr. Is that fair to say?

09:28:18 10 A. Correct.

09:28:19 11 Q. He was not -- at least as far as we know, he has no

09:28:22 12 history of violence?

09:28:24 13 A. Nothing that I knew of, no.

09:28:29 14 MR. HARDING: Moving to the next slide, please.

09:28:31 15 Q. Who is depicted here in this photograph sir?

09:28:33 16 A. This lady in blue here is Patti Steffens, David Waters'

09:28:38 17 girlfriend.

09:28:39 18 MR. HARDING: All right. Next slide, please.

09:28:41 19 Q. There's four individuals, but you've already identified

09:28:43 20 the two on the right. Who are the two on the left?

09:28:46 21 A. The two on the left, the gentleman -- the tall gentleman

09:28:48 22 is Gerald Osborne, and he is known as "Chico" also. And I

09:28:55 23 think that that's Chico's wife or girlfriend.

09:28:59 24 Q. But had no relation to this case that we're aware of?

09:29:01 25 A. No. None, whatsoever.

09:29:02 1 MR. HARDING: Okay. Moving to slide 9, please.

09:29:05 2 Q. So you described the overall scheme was to take the
09:29:09 3 O'Hairs away from their home, take them to a location, and
09:29:13 4 separate them from their wealth. Is that a fair summary?

09:29:15 5 A. Yes.

09:29:16 6 Q. First of all, focusing on Mr. Karr's actions around this
09:29:24 7 period of time, did Mr. Karr rent a passenger van on
09:29:29 8 August 26th of 1995?

09:29:31 9 A. Yes, sir, he did.

09:29:32 10 Q. Did he use his own name in renting that van?

09:29:35 11 A. Yes. He -- but he rented it in cash.

09:29:39 12 Q. Turning to August 27th, can you describe for the Court
09:29:43 13 briefly, in particular in relation to the disappearance of the
09:29:46 14 O'Hairs, what happened on the 27th of August 1995?

09:29:50 15 A. On Sunday, August 27th, the O'Hairs were working at the
09:29:55 16 atheist headquarters. And using a ruse, they came to being --
09:30:01 17 David -- I'm sorry. Gary Karr and Danny Fry came to the door
09:30:08 18 with a delivery of a package. When they did, they pulled guns
09:30:11 19 on these folks and entered, and then David Waters subsequently
09:30:15 20 came in.

09:30:16 21 Q. And fair to say that a lot of the details about this event
09:30:19 22 that you're recounting now come from David Waters' statement.
09:30:25 23 Is that fair to say?

09:30:25 24 A. Yes.

09:30:25 25 Q. There's a lot of circumstantial evidence around it, but in

09:30:27 1 terms of the details, the only firsthand account we have is
09:30:28 2 from David Waters, right?
09:30:30 3 A. Correct.
09:30:30 4 Q. You mentioned a ruse they used to approach. That was a
09:30:34 5 ruse that Mr. Waters described where they used the van rented
09:30:38 6 by Mr. Karr, posted sort of a fake logo on it, and pretended to
09:30:45 7 be couriers; is that correct?
09:30:47 8 A. Correct.
09:30:47 9 Q. At some point during their time there -- "there" being at
09:30:53 10 the Austin Atheist Headquarters, Mr. Waters described somebody
09:30:57 11 trying to gain access to the building while they were in there
09:31:00 12 with the O'Hairs. Is that fair to say?
09:31:03 13 A. Correct. There were some workers there.
09:31:04 14 Q. And Mr. Alvarado, Willis Alvarado, testified during the
09:31:07 15 trial that, in fact, he did see a van that appeared to be a
09:31:10 16 rental van to him at the premises at that time?
09:31:13 17 A. Correct.
09:31:13 18 Q. So once the O'Hairs are taken from their place of work,
09:31:21 19 what happens next?
09:31:22 20 A. They are taken -- well, what happens next is that
09:31:25 21 Robin Murray O'Hair arrives, because she wasn't there
09:31:32 22 initially. When she arrives, they deal with her at this point.
09:31:35 23 And also then Mr. Karr takes -- takes Robin's Porsche and parks
09:31:44 24 it in the short-term parking lot at Mueller Airport at the
09:31:48 25 time.

09:31:48 1 Q. And according to Mr. Karr's own statement given to police,
09:31:51 2 that was intended to give the impression she had left Austin
09:31:55 3 via the airport?

09:31:56 4 A. Correct.

09:31:57 5 Q. There's a brief stay at a motel in Buda. Is that fair to
09:32:04 6 say?

09:32:04 7 A. Yes.

09:32:04 8 MR. HARDING: But if we go to the next slide, please.

09:32:07 9 Q. Can you describe for the Court the Warren -- the role the
09:32:11 10 Warren Inn played in this case, Mr. Martin?

09:32:13 11 A. Yes. The Warren Inn is where the O'Hairs and Waters and
09:32:17 12 Karr and Fry were housed, and I think it was room 11 there on
09:32:22 13 the second floor of the Warren Inn village section, yes.

09:32:26 14 Q. And did Mr. Waters have some previous knowledge of this
09:32:29 15 location?

09:32:30 16 A. Yes. When he first moved to Austin -- to Texas, that's
09:32:35 17 where he and Patti Steffens stayed back in the early 90s.

09:32:40 18 Q. Okay. And fair to say the bulk of the acts that we're
09:32:43 19 going to describe here take place during the late months of
09:32:46 20 August, the month of September, and the early days of October
09:32:50 21 here in the Warren Inn?

09:32:52 22 A. Yes.

09:32:53 23 Q. You mentioned the apartment was a second floor apartment?

09:32:58 24 A. Yes.

09:32:59 25 Q. Without getting too far ahead of ourselves, at some point

09:33:05 1 the O'Hairs are moved to La Quinta Inn; is that correct?

09:33:09 2 A. Later on at the end of September, yes.

09:33:11 3 Q. And did David Waters explain why he wanted -- let me start
09:33:14 4 over.

09:33:15 5 What floor of -- were the rooms at the La Quinta?

09:33:19 6 A. The La Quinta was on the very first floor.

09:33:21 7 MS. WILLIAMS: Excuse me, Your Honor. I object to
09:33:23 8 the -- to this witness. I've just realized that this witness
09:33:27 9 is interspersing trial testimony with a statement that was
09:33:33 10 given by David Waters in I think the year 2001.

09:33:38 11 David -- this statement of David Waters was never
09:33:43 12 subject to cross-examination by the defense, was never -- has
09:33:47 13 never been given in written form to the defense. And
09:33:50 14 David Waters is no longer alive, cannot -- cannot be here to --
09:33:55 15 to bolster or rebut this statement. And I think that it's a
09:34:01 16 violation of due process. I think it's a violation of the
09:34:05 17 right to trial by jury. It's a violation of the confrontation
09:34:10 18 clause for this witness to now testify about a statement that
09:34:15 19 has never been subject to cross-examination. We don't know
09:34:19 20 whether it's fully the truth, fully a lie, or some mixture of
09:34:24 21 the two.

09:34:25 22 THE COURT: Mr. Harding?

09:34:25 23 MR. HARDING: Your Honor, first off Mr. Martin is the
09:34:30 24 person who took the statement from David Waters in 2001. Every
09:34:35 25 piece of evidence that we have related to that statement was

09:34:38 1 provided to counsel, including over ten hours of audiotape.

09:34:41 2 As for the question of confrontation, as we mentioned
09:34:44 3 in our sentencing memo, there is no confrontation right at a
09:34:49 4 sentencing. It's routine for the Court to consider materials
09:34:52 5 outside of what would normally be allowed at a trial. That's
09:34:55 6 done all the time. In fact, presentence reports wouldn't be
09:34:58 7 possible without that rule.

09:34:59 8 And under the statutory and under the guidelines,
09:35:03 9 this Court is to consider all evidence when arriving at a
09:35:06 10 sentence, not simply evidence that was adduced at trial.
09:35:10 11 Certainly, the defense wants you to consider all the good
09:35:12 12 things Mr. Karr has done since trial. It's only fair that this
09:35:14 13 Court hears all of the evidence that has been developed since
09:35:18 14 the time of trial in arriving at his sentence.

09:35:20 15 THE COURT: It's your objection. You can have the
09:35:22 16 last word.

09:35:22 17 MS. WILLIAMS: Judge, first of all, all of the
09:35:26 18 evidence that's been provided to us doesn't include all of the
09:35:30 19 statement because, apparently, at least one of the tapes is
09:35:33 20 missing. Is that true?

09:35:34 21 MR. HARDING: As we mentioned in our sentencing memo,
09:35:38 22 that is correct. Disc 8 was missing and was omitted.

09:35:39 23 MS. WILLIAMS: So we don't know what was said in that
09:35:42 24 tape. But, nevertheless, Judge, this is highly irregular.
09:35:45 25 Notwithstanding what Mr. Harding says, we do certainly consider

09:35:52 1 presentence reports. We don't generally consider statements of
09:35:54 2 a person taken under these circumstances who has been dead for
09:36:00 3 16 years.

09:36:01 4 THE COURT: All right. The objection is overruled.

09:36:02 5 But, Mr. Harding, what I want you to do as best you
09:36:05 6 can is break it up with your questions of Mr. Martin so the
09:36:17 7 record will be clear as to what he learned in the 2001
09:36:19 8 statement and what was learned previously that was adduced at
09:36:25 9 either trial or the first sentencing hearing in this case.

09:36:28 10 MR. HARDING: Yes, sir.

09:36:29 11 MS. WILLIAMS: And certainly, Judge, I don't have any
09:36:31 12 objection to Mr. Harding leading to try to get to that point
09:36:34 13 more quickly.

09:36:35 14 THE COURT: Thank you.

09:36:37 15 Q. (BY MR. HARDING) So, again, this -- I'll confine -- I'll
09:36:40 16 direct you to David Waters' statement in 2001.

09:36:44 17 What did Mr. Waters say about why he wanted to move
09:36:46 18 from a second floor room to a first floor room?

09:36:49 19 A. It would be better to move bodies from a second -- from a
09:36:57 20 first floor, the way the situation was at this La Quinta, than
09:37:03 21 it would be to move the bodies at the Warren Inn.

09:37:06 22 Q. And as part of that -- this is part of the trial record,
09:37:09 23 and certainly you can see from the photographs -- the O'Hairs
09:37:12 24 were large people?

09:37:13 25 A. Yes.

09:37:13 1 Q. And Madalyn Murray O'Hair, as was introduced at trial, had
09:37:17 2 a variety of mobility issues, including occasionally using a
09:37:21 3 wheelchair. Is that fair to say?

09:37:23 4 A. Correct.

09:37:23 5 Q. And so that was Mr. Waters' concern that he made in his
09:37:26 6 statement about the second floor of the Warren Inn?

09:37:29 7 A. That was his thought, yes.

09:37:31 8 Q. Okay. If we could move to the -- sorry. Before we move
09:37:34 9 on, whose name was the rental of the Warren in?

09:37:39 10 A. The rental was in the name of David Waters and Gary Karr.

09:37:44 11 Q. Okay. No alias. Gary Karr's real name as part of that
09:37:48 12 rental?

09:37:49 13 A. Yes, sir.

09:37:49 14 Q. And Danny Fry made -- as was introduced at trial, evidence
09:37:54 15 of many phone calls that Danny Fry made not only identifying
09:37:58 16 his location as the Warren Inn, but also toll records show he
09:38:02 17 made many phone calls for phones at and near the Warren Inn; is
09:38:06 18 that correct?

09:38:07 19 A. Correct.

09:38:07 20 Q. Okay. So you mentioned as part of this scheme the --
09:38:16 21 Mr. Waters, Mr. Karr, Mr. Fry are trying to get money from the
09:38:19 22 O'Hairs. As it happens, is it fair to -- fair to sort of break
09:38:24 23 it up into a large \$600,000 transaction sort of towards the end
09:38:32 24 and then a variety of other transactions throughout the period
09:38:35 25 of time?

09:38:36 1 A. Correct.

09:38:36 2 Q. So I want to forget about the \$600,000 transaction to
09:38:40 3 start with and focus only on other items purchased, wire
09:38:45 4 transfers, cashed checks, and so on prior to that. Okay?

09:38:49 5 A. Correct.

09:38:50 6 Q. Can you describe -- we'll go over it in some detail, but
09:38:55 7 describe in brief what happened once the O'Hairs are taken to
09:38:59 8 the Warren Inn in terms of money being taken from them?

09:39:03 9 A. Yes. Funds were -- were removed from bank accounts by
09:39:06 10 checks, I guess, and transfers -- not transfers, but actually
09:39:09 11 to convert it to cash, advances on credit cards. In that case
09:39:15 12 Jon Murray sold his only asset that he ever owned was a
09:39:21 13 Mercedes. And he sold that for less than its market value. So
09:39:28 14 a lot of their personal finance well-being was -- was taken and
09:39:36 15 converted to cash.

09:39:37 16 Q. And in some cases, for instance, the sale of John's
09:39:42 17 Mercedes-Benz, that was sold at a substantial monetary loss --

09:39:44 18 A. Yes, sir.

09:39:45 19 Q. -- compared to market value?

09:39:47 20 A. Yes, sir.

09:39:48 21 Q. In terms of the three Rolex watches that are described
09:39:51 22 here on this slide, who wound up with those Rolex watches.

09:39:53 23 A. Mr. Karr wound up with the watches.

09:39:56 24 Q. And the 30-day period in September, considering cash
09:40:02 25 advances, cashed checks, and other items, we're estimating

09:40:05 1 approximately \$90,000 taken from the O'Hairs during that period
09:40:09 2 of time. Is that fair to say?

09:40:11 3 A. That's correct. That's what I was able to find.

09:40:14 4 Q. And this is all based on trial testimony?

09:40:16 5 A. Yes, sir. And based on evidence.

09:40:19 6 MR. HARDING: Go to the next slide, please.

09:40:19 7 Q. So, having taken the money from the O'Hairs, what did
09:40:22 8 Mr. Waters, Mr. Karr, and Mr. Fry do with it?

09:40:26 9 A. Well, they sent some of that money back to their family
09:40:29 10 and friends. Mr. Waters purchased a Cadillac for cash. He
09:40:33 11 also purchased a diamond -- just a solitary diamond for \$6,000
09:40:41 12 with an American Express credit card. And they proceeded to
09:40:46 13 buy and obtain clothing, accessories, Armani suits, \$100
09:40:55 14 ties -- expensive clothing to start with.

09:40:59 15 Q. And this is all based on trial testimony?

09:41:01 16 A. Yes.

09:41:01 17 Q. The diamond that was purchased for \$6600, who wound up
09:41:06 18 with that?

09:41:07 19 A. Mr. Karr wound up with that later.

09:41:10 20 Q. Okay. And that's according not only to the trial
09:41:12 21 testimony, but also his own statement?

09:41:13 22 A. Yes.

09:41:17 23 Q. Okay. Let's turn to look at a quick breakdown of the
09:41:20 24 money that Mr. Karr personally got --

09:41:25 25 MR. HARDING: Go on to the next slide, please.

09:41:25 1 Q. -- during this period of time.

09:41:26 2 It's pretty hard to see on the projector, but there's
09:41:30 3 two highlighted portions of this slide. Fair to say they
09:41:33 4 describe wire transfer -- excuse me -- MoneyGram purchases in
09:41:36 5 the amount of approximately \$6,300, purchased by Gary Karr for
09:41:41 6 Charlene Karr?

09:41:42 7 A. That's correct.

09:41:43 8 Q. And this is still in August of 1995, correct?

09:41:45 9 A. August 29th, yes.

09:41:47 10 Q. So before we even hit September, he's already cleared
09:41:51 11 \$6300 and change?

09:41:53 12 A. Yes.

09:41:53 13 MR. HARDING: If we could move to the next slide,
09:41:56 14 please.

09:41:57 15 Q. Then we see September 1st, a payment of \$1500 to his
09:42:00 16 Discover Card. Importantly, Mr. Karr's employer at the time
09:42:11 17 testified at trial, correct?

09:42:12 18 A. Correct.

09:42:12 19 Q. And he described that, although Mr. Karr had worked up
09:42:16 20 to -- essentially up to the time he came to Texas, he didn't
09:42:19 21 return to employment until October of 1995; is that correct?

09:42:24 22 A. Correct.

09:42:24 23 Q. During this period of time -- I'm sorry. Did I interrupt
09:42:28 24 you?

09:42:28 25 A. No, sir.

09:42:29 1 Q. During this period of time, he's not working for
09:42:32 2 Art Miller in Florida?

09:42:34 3 A. He's not. That's right.

09:42:35 4 Q. And Patti Joe Steffens testified she's not aware he had
09:42:39 5 any job beyond whatever he was doing with the O'Hairs during
09:42:43 6 this time, correct?

09:42:44 7 A. Correct.

09:42:44 8 Q. Okay. So \$1500 paid on a credit card on September 1st.
09:42:50 9 September 16th we have \$852, again, purchased by Gary Karr for
09:42:56 10 a family member?

09:42:58 11 A. Correct.

09:42:59 12 Q. Going to the next slide, or the bottom of this slide, I
09:43:03 13 should say, we have another balance payment on his Discover
09:43:07 14 Card in the amount of \$200.

09:43:08 15 MR. HARDING: Next slide, please.

09:43:11 16 Q. Again, now we're in October of 1995. We have Western
09:43:16 17 Union wire transfers by Patti Steffens on behalf of Gary Karr,
09:43:22 18 according to her testimony, in the amount of over \$2,000. Or I
09:43:26 19 believe she testified she thought the principal was \$2,000 and
09:43:30 20 the other was a fee.

09:43:31 21 And then this \$15,000 figure on October 3rd of 1995,
09:43:38 22 can you describe that for the Court and what that represents.

09:43:40 23 A. Well, that's combination of the watches and the clothing
09:43:44 24 and everything that Mr. Karr, when he -- when he leaves Austin
09:43:53 25 to go back to Florida.

09:43:54 1 Q. And that's an estimate that Charlene Karr made of what she
09:43:57 2 believed the value of those items to be, approximately,
09:44:00 3 correct?

09:44:00 4 A. Correct.

09:44:01 5 Q. Finally, we have the payment of the Four Seasons Hotel as
09:44:06 6 well as the Rolex watches that Mr. Karr obtained, correct?

09:44:10 7 A. Correct.

09:44:11 8 Q. So considering only the cash, we're at probably over
09:44:17 9 \$10,000, correct?

09:44:21 10 A. Correct.

09:44:21 11 Q. In Mr. Karr's statement to police, he claims David Waters
09:44:25 12 paid him no more than \$6,000 for this whole thing?

09:44:28 13 A. Correct.

09:44:28 14 Q. And he further stated that, as of October 2nd, he still
09:44:33 15 had several thousand dollars on his person?

09:44:34 16 A. Correct.

09:44:35 17 Q. Does that appear to you to be consistent with the
09:44:38 18 financial investigation that you conducted in this case?

09:44:42 19 A. Pretty much. I mean, you couldn't see everything, but
09:44:44 20 yes.

09:44:44 21 Q. Sorry. My question is: Do you believe he was accurately
09:44:49 22 reporting the amount of money he received?

09:44:51 23 A. No. No, he wasn't. He received much more than he was
09:44:54 24 saying. He was minimizing.

09:44:56 25 Q. Now I want to turn away from, sort of, the other extortion

09:44:59 1 and robbery from the O'Hairs and turn to the \$600,000

09:45:03 2 transaction.

09:45:03 3 A. Correct.

09:45:04 4 Q. Would you agree with me this was sort of the crux of this
09:45:08 5 case and sort of a turning point in the fate of the O'Hairs?

09:45:11 6 A. Correct.

09:45:12 7 Q. Okay. Can you describe just in very basic detail what
09:45:20 8 Mr. Waters was trying to get his hands on, where it was
09:45:23 9 located, and how he intended to convert it.

09:45:26 10 A. Yes. The O'Hairs had sent money to New Zealand,
09:45:30 11 anticipating they may be moving to New Zealand, and those funds
09:45:35 12 came from the United Secularists of America. And then what was
09:45:39 13 happening is that money was being returned to the
09:45:42 14 United States. It took a while to get here. The banking
09:45:46 15 system in New Zealand is different than the banking system in
09:45:49 16 the United States, but it ultimately got here.

09:45:52 17 And, when it did, the money came to the National
09:45:56 18 Westminster Bank of New Jersey. Initially they tried to
09:45:59 19 transfer that money. There's a lot of phone calls back and
09:46:02 20 forth trying to get the transfer of that money to San Antonio.
09:46:05 21 But the -- the bank would not allow that, and so there had to
09:46:08 22 be actual presence of the person that has -- that is on the
09:46:13 23 account, which caused Mr. Murray -- Mr. Jon Garth Murray to go
09:46:18 24 to New Jersey.

09:46:19 25 Q. And who went with Mr. Murray to New Jersey?

09:46:21 1 A. Mr. Karr did.

09:46:22 2 Q. Did Mr. Karr use his real name during that trip?

09:46:26 3 A. No. He used an alias.

09:46:28 4 Q. Conrad Johnson?

09:46:29 5 A. Yes.

09:46:30 6 Q. There was trial testimony that the plane tickets were

09:46:34 7 purchased sort of at the last minute, right?

09:46:36 8 A. Correct.

09:46:36 9 Q. And, in fact, on the same day that they took the trip?

09:46:39 10 A. That's correct.

09:46:40 11 Q. The cost of that was over \$1,000 per ticket, correct?

09:46:45 12 A. Correct.

09:46:45 13 Q. While Mr. Murray is in New York -- New Jersey with

09:46:51 14 Mr. Karr, does he withdraw a substantial amount of money?

09:46:55 15 A. He did. He withdrew another \$12,000 from another -- a

09:47:00 16 branch of the bank while they were in New Jersey and fixing to

09:47:04 17 leave.

09:47:05 18 Q. Based on the evidence we know, Mr. Murray and Mr. Karr

09:47:08 19 were the only ones in New Jersey at that time of this group?

09:47:11 20 A. Correct.

09:47:12 21 Q. Mr. Waters stated in 2001 he never saw a dollar one of

09:47:18 22 that money, did he?

09:47:19 23 A. Correct.

09:47:19 24 Q. He didn't realize that Mr. Karr had obtained that money

09:47:22 25 from Mr. Murray?

09:47:23 1 A. That's what he said.

09:47:26 2 Q. So the 22nd, Mr. Murray and Mr. Karr go to New Jersey and

09:47:34 3 effectuate this funds transfer to Cory Ticknor; is that right?

09:47:37 4 A. That's correct.

09:47:38 5 Q. Can you describe for the Court who Cory Ticknor was?

09:47:41 6 A. Cory Ticknor is a former San Antonio police officer who

09:47:44 7 operates Cory Ticknor Fine Jewelers and Coinage. And he was

09:47:49 8 able to convert a wire transfer which he received to gold

09:47:56 9 bullion coins for Mr. -- Mr. Murray.

09:47:59 10 Q. And according to trial testimony as well as Mr. Waters'

09:48:03 11 statement, once Mr. Ticknor has this money, he starts putting

09:48:08 12 together -- he starts converting it and buying up gold coins

09:48:13 13 eventually to release to Jon Murray, correct?

09:48:15 14 A. Correct. On September 25th he actually executes the

09:48:19 15 purchase of the --

09:48:20 16 Q. Okay.

09:48:20 17 A. -- of the coins.

09:48:21 18 Q. But as of September 22nd, Mr. Waters, Mr. Karr, and

09:48:30 19 Mr. Fry, they know that money is now in Mr. Ticknor's hand?

09:48:34 20 A. Correct.

09:48:34 21 Q. This transaction is going to happen?

09:48:36 22 A. Absolutely.

09:48:38 23 Q. So if we jump ahead to September 23rd, the day after --

09:48:41 24 the day Mr. Karr and Mr. Waters -- excuse me -- Mr. Karr and

09:48:45 25 Mr. Murray return from New Jersey, what does Patti Jo Steffens

09:48:48 1 do?

09:48:49 2 A. She is instructed by David to go ahead and rent a storage

09:48:52 3 unit at Burnet Road Storage.

09:48:54 4 Q. And according to not only trial testimony, but also

09:48:57 5 Mr. Waters' statement, the purpose -- what was the purpose of

09:49:00 6 renting that storage unit?

09:49:01 7 A. That's where the gold ultimately would be stored.

09:49:04 8 Q. At this Burnet Storage unit?

09:49:06 9 A. At the Burnet Storage unit. Yes, sir.

09:49:10 10 MR. HARDING: Okay. Go to the next slide.

09:49:11 11 Q. On September 26th of 1995, you mentioned earlier that

09:49:15 12 Chico Osborne rented a storage unit as well; is that right?

09:49:19 13 A. That's correct.

09:49:19 14 Q. Can you describe how that came to pass and what was the

09:49:23 15 purpose -- well, describe how that came to pass, based on trial

09:49:29 16 testimony?

09:49:29 17 A. Yes Chico Osborne lived in Lake Tawakoni, Texas, and he

09:49:36 18 was contacted to come to Austin, get some money from

09:49:41 19 Patti Steffens, and go rent a storage unit at Public Storage on

09:49:45 20 Lamar Avenue. And that's what he did.

09:49:47 21 Q. Based on David Waters' 2001 statement, what was the purpose

09:49:52 22 of renting this storage unit?

09:49:54 23 A. It's where they were going to process the bodies.

09:49:56 24 Q. So September 26th of 1995, at the latest, is when

09:50:03 25 David Waters says the O'Hairs are dead?

09:50:06 1 A. Correct.

09:50:07 2 Q. Based on trial testimony, was there any other apparent
09:50:11 3 purpose -- legitimate purpose for renting this storage unit?

09:50:15 4 A. Nothing, no.

09:50:16 5 Q. So if we then move to the 27th, we mentioned this earlier,
09:50:22 6 what happens importantly with the O'Hairs on the 27th?

09:50:26 7 A. The O'Hairs were moved from the Warren Inn to the
09:50:30 8 La Quinta Inn in anticipation of picking up the gold coins.

09:50:34 9 Q. And, again, David Waters stated the reason he wanted to
09:50:39 10 move them was because he doesn't want to move these bodies from
09:50:41 11 a second floor apartment?

09:50:42 12 A. Sure. Absolutely.

09:50:43 13 Q. Something else also happens on the 27th with respect to
09:50:47 14 Mr. Karr, correct?

09:50:48 15 A. Correct.

09:50:48 16 Q. What is -- what happens on the 27th with respect to
09:50:51 17 Mr. Karr?

09:50:52 18 A. Mr. Karr comes to Austin from San Antonio and rents a
09:50:57 19 cargo van, which means no seats, just an empty bay in the back.
09:51:04 20 And that's what happened.

09:51:06 21 Q. So that's rented on the 27th?

09:51:09 22 A. Correct.

09:51:09 23 Q. When is it returned, if you recall?

09:51:11 24 A. I think it was returned on the 30th.

09:51:14 25 Q. So whatever was going to be done with that van happened

09:51:19 1 between the 27th and 30th. Is that fair to say?

09:51:21 2 A. Correct.

09:51:23 3 Q. I want to jump back briefly to the first van rental. In
09:51:31 4 renting the van, Mr. Karr gave Patti Joe Steffens' and
09:51:35 5 David Waters' phone number to the rental agent, correct --

09:51:39 6 A. Correct.

09:51:41 7 Q. -- based on trial testimony?

09:51:42 8 In this case there was no phone number associated.

09:51:46 9 MR. HARDING: If we could move to the next slide
09:51:50 10 please. Have we covered this slide? We can go to the next
09:51:54 11 slide, please.

09:51:55 12 Q. So September 29th, 1995, what -- let's break it down.

09:52:03 13 What happens in the morning on September 29th, 1995
09:52:08 14 with respect to Jon Murray and the gold coins?

09:52:10 15 A. Jon Murray goes to the Frost National Bank and meets with
09:52:17 16 Cory Ticknor and the bank vice-president and I think
09:52:21 17 Mr. Ticknor's security guard. And they exchange and sign
09:52:26 18 paperwork exchanging the gold which Mr. Karr -- I mean,
09:52:32 19 Mr. Murray takes with him and leaves.

09:52:38 20 Q. How did the folks present during that transaction describe
09:52:42 21 Jon Murray's appearance at that time?

09:52:44 22 A. He was disheveled. He looked like he slept in his
09:52:48 23 clothes. He smelled. So that's what it was.

09:52:51 24 Q. And there was earlier trial testimony from folks who knew
09:52:54 25 the O'Hairs that Jon, in particular, and Robin were "neat

09:52:58 1 freaks." Is that a fair assessment?

09:53:00 2 A. Correct.

09:53:01 3 THE COURT: Let me interrupt just a minute.

09:53:03 4 Mr. Martin, I'm not sure I understood. Go back over
09:53:09 5 what occurred at Frost Bank.

09:53:14 6 THE WITNESS: Yes, sir. They entered a room, and the
09:53:18 7 gold was in a safe deposit box. And the gold was brought out
09:53:22 8 of the safe deposit.

09:53:24 9 THE COURT: How did the gold get to the safe deposit
09:53:28 10 box?

09:53:29 11 THE WITNESS: Cory Ticknor would periodically make a
09:53:31 12 deposit to the safe deposit box.

09:53:33 13 THE COURT: So Cory Ticknor got the wire transfer and
09:53:36 14 started buying gold bullion. And, as he would get it, he would
09:53:39 15 take it to safety deposit box at Frost?

09:53:41 16 THE WITNESS: Yes, sir.

09:53:42 17 THE COURT: And then on September the 29th, 1995,
09:53:48 18 Mr. Murray and Mr. Karr and Mr. Waters went to Frost Bank?

09:53:56 19 THE WITNESS: Mr. Murray and -- Mr. Murray went in
09:53:59 20 the bank, and Mr. Karr and Mr. Waters sat outside the bank.

09:54:03 21 MR. HARDING: Your Honor, if I may break it down so
09:54:05 22 that the testimony is clear about where the evidence comes
09:54:08 23 from?

09:54:08 24 THE COURT: That would be fine. I just wanted to get
09:54:10 25 that sequence down.

09:54:11 1 THE WITNESS: Sure.

09:54:12 2 Q. (BY MR. HARDING) The evidence at trial, you would agree
09:54:14 3 with me, was that Mr. Murray was alone in the bank, he was
09:54:19 4 alone upon leaving the bank. Neither Mr. Ticknor nor the
09:54:24 5 security guard noticed other people sort of hovering over or
09:54:27 6 watching. Is that fair to say?

09:54:30 7 A. That's correct.

09:54:30 8 Q. The information that Mr. Waters and Mr. Karr accompanied
09:54:34 9 Mr. Murray to the bank comes from David Waters' 2001 statement?

09:54:39 10 A. Correct.

09:54:39 11 Q. Okay.

09:54:40 12 MR. HARDING: Is that ...

09:54:41 13 MS. WILLIAMS: Judge, if I could just ask two
09:54:44 14 questions about this to clarify?

09:54:46 15 THE COURT: You may.

09:54:48 16 MS. WILLIAMS: The security guard who was there was a
09:54:51 17 San Antonio police officer, correct?

09:54:53 18 THE WITNESS: Correct.

09:54:54 19 MS. WILLIAMS: In a San Antonio police officer
09:54:55 20 uniform?

09:54:55 21 THE WITNESS: Yes.

09:54:56 22 MS. WILLIAMS: With a gun and a police radio,
09:54:57 23 correct?

09:54:57 24 THE WITNESS: Yes.

09:54:59 25 MS. WILLIAMS: Thank you.

09:55:02 1 Q. (BY MR. HARDING) On that point, Mr. -- Mr. Waters was
09:55:04 2 asked about that particular fact during his interview. Did he
09:55:08 3 explain why he believed Jon Murray didn't do anything?

09:55:11 4 A. Because his -- his mother and his niece were being held
09:55:16 5 captive at the La Quinta.

09:55:19 6 Q. And, similarly, when asked why Jon Murray didn't do
09:55:22 7 something to call attention to himself in New Jersey, the same
09:55:27 8 explanation was given, correct?

09:55:29 9 A. Correct.

09:55:29 10 Q. Okay. So Jon Murray, disheveled, smells bad, he gets some
09:55:40 11 gold coins from Cory Ticknor on that day. Does he get all
09:55:44 12 600,000?

09:55:45 13 A. No, sir, he did not.

09:55:46 14 Q. Why not?

09:55:47 15 A. It had not arrived yet. It arrived the following Monday.

09:55:51 16 Q. But Mr. Murray elected or was forced to go get it before
09:55:58 17 it was all there. Is that a fair characterization?

09:56:01 18 A. Whatever means -- whatever other reason why they went,
09:56:06 19 they went to get it, and apparently the money was not there. I
09:56:08 20 don't know if they had any conversation about how much was
09:56:11 21 actually there.

09:56:12 22 Q. Okay. So now Jon Murray has the gold coins. At some
09:56:18 23 point does he transfer custody of those to David Waters and
09:56:21 24 Gary Karr -- or David Waters, anyway.

09:56:22 25 A. Yes, sir.

09:56:23 1 Q. And we know that in part because the testimony of Patti Jo
09:56:28 2 Steffens is: David Waters says that he has a half-million
09:56:32 3 dollars in gold coins in the Burnet Storage unit; is that
09:56:37 4 right?

09:56:37 5 A. Correct.

09:56:37 6 Q. Okay. So now that the -- now that Mr. Karr and Mr. Waters
09:56:41 7 and Mr. Fry have the gold and after everyone returns to the
09:56:47 8 La Quinta, what happens next?

09:56:51 9 A. Well ...

09:56:51 10 Q. Let me pause. What did the Mr. Waters say happened next
09:56:54 11 in 2001?

09:56:55 12 A. They entered the room, and -- in two separate rooms. The
09:57:02 13 first room was where Jon Murray was kept, and the second room
09:57:07 14 was where Madalyn and Robin were kept, and they proceeded to
09:57:11 15 kill Mr. Murray O'Hair.

09:57:13 16 Q. And Mr. Murray was restrained at this time, according to
09:57:17 17 Mr. Waters?

09:57:18 18 A. He was what? I'm sorry.

09:57:19 19 Q. Restrained?

09:57:20 20 A. Yes. He was restrained.

09:57:22 21 Q. Can you describe for the Court, according to Mr. Waters,
09:57:24 22 how he, Mr. Karr, and Mr. Fry killed Jon Murray.

09:57:29 23 A. They -- they strangled him with a belt, or they tried to
09:57:33 24 strangle him with a belt, and then they also put a plastic bag
09:57:36 25 over his head and suffocated him.

09:57:38 1 Q. Okay. Did they indicate -- did Mr. Waters indicate that
09:57:41 2 Jon Murray, a big man, fought hard?

09:57:43 3 A. Yes. In fact, yes, he struck his head apparently on
09:57:47 4 the -- the night table that's in between the beds, and he
09:57:52 5 flailed, I'm sure. Adrenaline kicked in.

09:57:55 6 Q. Well, I don't want you to imagine what happened. I want
09:57:58 7 Mr. Waters claimed --

09:57:59 8 A. Correct.

09:57:59 9 Q. -- there was a hard fight?

09:58:00 10 A. Exactly.

09:58:01 11 Q. But, ultimately, the three men were able to overcome him
09:58:05 12 and kill him?

09:58:05 13 A. Yes.

09:58:06 14 Q. After Jon Murray was dead, according to Mr. Waters, what
09:58:08 15 happened with respect to Madalyn Murray O'Hair and Robin Murray
09:58:12 16 O'Hair?

09:58:12 17 A. They went into the other room, and Gary Karr killed --
09:58:18 18 strangled Robin, and he and David Waters and Danny Fry
09:58:25 19 strangled Madalyn Murray O'Hair.

09:58:27 20 Q. And according to Mr. Waters, he and Danny Fry used the
09:58:31 21 same belt to strangle Madalyn?

09:58:34 22 A. Yes.

09:58:34 23 Q. And, again, fair to say Madalyn was shouting and
09:58:38 24 struggling, according to Mr. Waters?

09:58:40 25 A. Yes.

09:58:40 1 Q. Mr. Karr, strangling Robin, according to Mr. Waters, did
09:58:46 2 that also entail a struggle?

09:58:49 3 A. Yes, it did.

09:58:50 4 Q. At one point did Mr. Waters grow concerned at how -- how
09:58:55 5 much there was a struggle that the neighbors might hear it?

09:58:57 6 A. Correct.

09:58:58 7 Q. Because Robin was kicking against the neighboring wall.
09:59:02 8 Is that what he said?

09:59:03 9 A. Correct.

09:59:05 10 MR. HARDING: Okay. Next slide, please.

09:59:13 11 Q. So that's according to trial testimony and according to
09:59:16 12 David Waters' statement. That all occurs on September 29th?

09:59:20 13 A. Correct.

09:59:21 14 Q. What happens -- and now this is all going to be based on
09:59:25 15 David Waters' statement and inferences from trial testimony.

09:59:29 16 But primarily in terms of firsthand accounting from
09:59:32 17 David Waters, how do the O'Hairs' bodies wind up in the
09:59:41 18 Chico Osborne Public Storage unit?

09:59:44 19 A. Okay. They moved the bodies from the La Quinta out the
09:59:47 20 back side of La Quinta that evening, and then they brought the
09:59:52 21 bodies to the Central Texas -- Central Park Apartments, left it
09:59:57 22 in their van that Mr. Waters -- I mean, Mr. Karr had rented,
10:00:01 23 and overnight the bodies were there in the parking lot.

10:00:05 24 Q. They weren't -- were they covered?

10:00:08 25 A. Covered?

10:00:09 1 Q. Wrapped up in something?

10:00:10 2 A. Yes.

10:00:11 3 Q. Not just bodies in the van?

10:00:13 4 A. Right. They were just covered up.

10:00:15 5 Q. The following day, according to rental unit access records
10:00:22 6 as well as the statement of David Waters, what happens with the
10:00:25 7 Public Storage unit rented by Chico Osborne?

10:00:29 8 A. The bodies were taken there and dismembered. There were
10:00:34 9 ins and outs at the time. You can see from the following that
10:00:40 10 there was time that the van was returned to Capps Rental Van.
10:00:47 11 And then somebody entered back into the -- the Public Storage
10:00:52 12 unit, and they stayed there for a while. Sometimes they were
10:00:56 13 there for an hour or more.

10:00:58 14 Q. And according to both the government's theory of the case
10:01:01 15 at trial, but also the statement of Mr. Waters, the purpose of
10:01:06 16 that second van rented by Gary Karr was to move the body to
10:01:11 17 that storage unit?

10:01:12 18 A. Correct.

10:01:13 19 Q. And, in fact, on the 30th, as I think you mentioned, that
10:01:16 20 van was returned?

10:01:17 21 A. It is returned, yes.

10:01:18 22 Q. Its purpose has been served.

10:01:21 23 Focusing only -- I believe only on the testimony or
10:01:25 24 statement of David Waters in 2001, can you describe who cut up
10:01:31 25 the bodies and why.

10:01:32 1 A. Yes. To easily transport the bodies, they dismembered the
10:01:39 2 bodies, removed the legs, put them in a barrel so they could be
10:01:43 3 transported without any kind of concern. And that was done by
10:01:47 4 Mr. Fry and Mr. Karr.

10:01:49 5 Q. And why did Mr. Karr wind up doing this -- what
10:01:54 6 transaction or conversation occurred between Mr. Waters and
10:01:58 7 Mr. Karr that led to that outcome?

10:02:00 8 A. There was money involved as far as, if you do this work,
10:02:04 9 then you'll get more money out of it.

10:02:07 10 Q. David waters said --

10:02:09 11 A. Yes.

10:02:09 12 Q. Or according to David Waters --

10:02:11 13 A. Yes.

10:02:11 14 Q. -- Gary Karr said he would do it for \$25,000?

10:02:14 15 A. Yes.

10:02:15 16 Q. In terms of the barrels -- you said they were placed in
10:02:19 17 barrels. Again, based on the statement of David Waters, these
10:02:22 18 are barrels that Mr. Karr and Mr. Fry obtained at some time
10:02:26 19 unknown to Mr. Waters?

10:02:29 20 A. Yes. He just showed up with the barrels at once.

10:02:33 21 Q. And Mr. Waters, according to his statement, wasn't
10:02:36 22 tremendously pleased with that because the barrels weren't in
10:02:39 23 great shape and they weren't airtight. And he just was
10:02:42 24 concerned that there was going to be a smell and concerns of
10:02:45 25 that sort?

10:02:45 1 A. Leakage, yes. Uh-uh.

10:02:47 2 Q. After -- and so we're going to convert back to trial
10:02:50 3 testimony at this point. Patti Jo Steffens testifies that
10:02:56 4 there's about a 30-day period when -- let me take a step back.

10:03:02 5 Danny Fry had been living with David Waters since
10:03:06 6 about July. Is that fair to say?

10:03:08 7 A. Correct.

10:03:09 8 Q. And Mr. Karr arrived in Austin and was staying with
10:03:15 9 Mr. Waters shortly -- in the end of August?

10:03:17 10 A. At the end of August.

10:03:19 11 Q. So Patti Jo Steffens describes a period of time, about
10:03:26 12 30 days, beginning with the disappearance of the O'Hairs, when
10:03:29 13 they're not around much?

10:03:30 14 A. Correct.

10:03:31 15 Q. I believe she testified she saw them occasionally, once or
10:03:35 16 twice, during that period of time. But, for the most part,
10:03:38 17 they're gone?

10:03:38 18 A. Correct.

10:03:39 19 Q. And the first time she sees them after that 30-day period
10:03:43 20 all together, can you describe how she described Mr. Waters'
10:03:46 21 Mr. Karr's and Mr. Fry's appearance and demeanor?

10:03:50 22 A. Mr. Fry and Mr. Karr -- I'm sorry Mr. Waters and Mr. Karr
10:03:54 23 were amicable, friendly, and Danny Fry seemed to be on the
10:04:01 24 outs. David Waters was a bit short with him, apparently.

10:04:04 25 Q. And she testified that David -- Danny Fry looked, and I

10:04:08 1 quote, horror-stricken; is that right?

10:04:10 2 A. Correct.

10:04:10 3 Q. This is consistent with what Mr. Waters said about
10:04:14 4 Danny Fry's reaction; is that right?

10:04:17 5 A. Yes.

10:04:18 6 Q. In his 2001 statement?

10:04:20 7 A. Yes.

10:04:20 8 Q. Can you describe for the Court what Mr. Waters said in
10:04:23 9 2001 about how Danny Fry reacted and what actions he and
10:04:28 10 Mr. Karr took?

10:04:29 11 A. I'm sorry. At this point I don't recall.

10:04:30 12 Q. Okay. Did he describe that Mr. Fry was squeamish and not
10:04:36 13 happy about what had happened?

10:04:38 14 A. Sure. Yes.

10:04:38 15 Q. Did that give -- according to Mr. Waters, did that give
10:04:43 16 him and Mr. Karr concern about Danny Fry's overall involvement
10:04:47 17 now?

10:04:47 18 A. Yes, it did.

10:04:49 19 Q. What -- what decision did they reach at that time
10:04:52 20 regarding Danny Fry?

10:04:53 21 A. Danny Fry had to go.

10:04:56 22 Q. By "had to go," you mean they had to kill him?

10:04:58 23 A. They had to kill him, yes.

10:05:03 24 Q. Let's -- if we could jump ahead, let's talk about the last
10:05:09 25 day of Danny Fry's life, as far as the trial testimony and the

10:05:12 1 statement of David Waters go.

10:05:14 2 He described a phone call that Mr. Fry made on

10:05:19 3 September 30th of 1995?

10:05:21 4 A. Yes. His daughter was having her 16th birthday party,

10:05:27 5 Sweet 16 birthday, and he called her and told her, in effect,

10:05:31 6 that he was coming home and was going to take her on a big

10:05:33 7 shopping spree, and that he would be leaving.

10:05:38 8 Q. So, according to this phone call -- this is her testimony

10:05:40 9 at trial by the way -- he's saying he's going to be coming home

10:05:46 10 around this period of time?

10:05:48 11 A. Correct.

10:05:48 12 Q. Had he previously sent a letter to his brother through his

10:05:52 13 girlfriend or wife regarding this scheme?

10:05:56 14 A. Yes, he did.

10:05:57 15 Q. And in this letter did he say something to the effect of,

10:06:02 16 "If I'm found dead, David Waters did it"?

10:06:05 17 A. In effect.

10:06:06 18 Q. That's a summary based on a recollection from Bob Fry. Is

10:06:10 19 that fair to say?

10:06:11 20 A. That's correct.

10:06:12 21 Q. Okay. After this phone call on September 30th, does

10:06:17 22 Danny Fry make his way home?

10:06:20 23 A. No.

10:06:20 24 Q. According to David Waters' statement in 2001, what happens

10:06:29 25 with Danny Fry? What is his eventual fate, and how does he

10:06:35 1 reach it?

10:06:35 2 A. They drove him up to the Dallas area looking for a place
10:06:39 3 to put the bodies. That's their scheme. And in the process
10:06:44 4 came up a place, apparently off the Trinity River, walked him
10:06:47 5 into it, and, as he proceeded in front of them, David Waters
10:06:51 6 moved Mr. Karr over, took to his nine-millimeter, and shot
10:06:55 7 Mr. Fry in the back of the head and killed him.

10:06:57 8 Q. So a couple of things here. First of all, you said sort
10:06:59 9 of their scheme was this. Do you mean that -- what do you mean
10:07:04 10 by that was their scheme, that they were going to look for a
10:07:06 11 place to hide the bodies?

10:07:09 12 A. That was the ruse that they -- they were in his Camaro. I
10:07:12 13 mean, it's a small car. And that's how they got him into the
10:07:15 14 car, to go and make this decision as to where they're going to
10:07:19 15 bury the bodies.

10:07:20 16 Q. So Danny Fry is being told we need to find a place to hide
10:07:24 17 these bodies, but Mr. Karr and Mr. Waters have an ulterior
10:07:28 18 motive. Is that what you're saying?

10:07:30 19 A. Correct.

10:07:30 20 Q. Secondly, you mentioned that they take Mr. Fry out to a
10:07:33 21 remote location, they send him on ahead. Mr. Waters kind of
10:07:38 22 moves Mr. Karr aside and then shoots Danny Fry. Is that your
10:07:41 23 testimony?

10:07:42 24 A. Correct.

10:07:42 25 Q. In fairness, Mr. Waters didn't always say that?

10:07:49 1 A. Right.

10:07:49 2 Q. His first version of events was that Mr. Karr killed

10:07:52 3 Mr. Fry; is that right?

10:07:53 4 A. That's correct.

10:07:53 5 Q. And he explained one of the reasons he sort of made that

10:07:57 6 up was because he was resentful of Mr. Karr claiming he had no

10:08:02 7 knowledge of any of this to the police?

10:08:03 8 A. Correct.

10:08:04 9 Q. And, again, in fairness, Mr. Waters' statement, there are

10:08:09 10 inconsistencies in it?

10:08:11 11 A. Inconsistent, yes.

10:08:12 12 Q. It's not 100 percent consistent all the time?

10:08:15 13 A. Correct.

10:08:16 14 Q. He admitted that he made some things up?

10:08:18 15 A. Correct.

10:08:19 16 Q. His timelines sometimes, you know, were not 100 percent.

10:08:23 17 He had to be, you know, oriented to certain other events. He

10:08:26 18 didn't have a perfect memory of everything that happened. Is

10:08:30 19 that fair?

10:08:31 20 A. That's correct.

10:08:32 21 Q. Okay. According to -- according to Mr. Fry, in 2001 --

10:08:42 22 excuse me. According to Mr. Waters, in 2001, what happened

10:08:46 23 after Mr. Waters shot Danny Fry?

10:08:49 24 A. They left the scene at that point in time thinking that --

10:08:55 25 it was apparently at night. And so they left the scene at that

10:08:58 1 point in time, thinking that somebody might have heard the
10:09:00 2 shot. And so then they came back later, and then they
10:09:03 3 dismembered Mr. Fry.

10:09:04 4 Q. When you say "they," did Mr. Waters identify who actually
10:09:09 5 did the dismembering?

10:09:11 6 A. Well, he was there with Mr. Karr, but Mr. Karr did the
10:09:14 7 dismembering.

10:09:15 8 Q. And in terms of dismembering, it was Mr. Fry's head and
10:09:19 9 hands were removed; is that right?

10:09:21 10 A. Correct.

10:09:22 11 Q. And the purpose of that was?

10:09:24 12 A. So that the bodies couldn't be identified.

10:09:26 13 Q. According to Mr. Waters' statement, what happens with the
10:09:30 14 body, and what happens with the head and hands?

10:09:33 15 A. The body was stripped and laid -- just laid there on the
10:09:37 16 ground, and the head and hands were put into a bag and put in
10:09:44 17 the back -- in the back, I guess, wheel well of the Camaro.

10:09:49 18 Q. And, ultimately, that's transported back to the Public
10:09:53 19 Storage unit as well?

10:09:54 20 A. It was then taken back to the Public Storage unit and then
10:10:02 21 put in the barrels with the O'Hairs' remains.

10:10:05 22 Q. Looking at slide 24, can you describe for the Court what
10:10:09 23 we're looking at in slide 24?

10:10:11 24 A. Yeah. This is the wooded area in which the bodies -- the
10:10:15 25 body of Danny Fry was found. It's a tributary to the Trinity

10:10:21 1 River, and that's where someone responded and told Dallas
10:10:27 2 County Sheriff's Office that there was a body there.

10:10:30 3 Q. And that body was found on October 2nd, 1995; is that
10:10:34 4 right?

10:10:34 5 A. Yes.

10:10:35 6 MR. HARDING: Go to the slide 25, please.

10:10:37 7 Q. What are we looking at in slide 25, particularly towards
10:10:40 8 to top of the screen?

10:10:41 9 A. Yes. That's a rendition or picture of Danny Fry's body
10:10:46 10 without a head, and the hands -- you can't see the hands
10:10:49 11 either. But that's what happened there.

10:10:51 12 MR. HARDING: Go to the next slide, please.

10:10:53 13 A. Yes.

10:10:54 14 Q. This was an exhibit that was not admitted at trial because
10:10:58 15 the defense objected that it was too prejudicial, and
10:11:00 16 Judge Sparks agreed. But what is depicted in what's shown here
10:11:04 17 as, sort of, Government's Exhibit 24, not actually admitted, on
10:11:08 18 slide 26?

10:11:09 19 A. That's the head and hand -- head- and handless body of
10:11:14 20 Danny Fry.

10:11:16 21 MR. HARDING: All right. Go to the next slide,
10:11:18 22 please.

10:11:18 23 Q. So, if I understand your testimony correctly, at this
10:11:21 24 point the storage unit has not only the O'Hairs' remains in it
10:11:31 25 that were cut up by Mr. Karr and Mr. Fry, but also Mr. Fry's

10:11:37 1 head and hands?

10:11:37 2 A. Yes.

10:11:37 3 Q. At this point, what does Mr. Karr do with respect to a

10:11:38 4 third van?

10:11:39 5 A. Do?

10:11:40 6 Q. A third van.

10:11:41 7 A. Oh, a third van. He rents a third van.

10:11:43 8 Q. And that was on October 2nd --

10:11:45 9 A. Yes.

10:11:46 10 Q. -- the same day that Danny Fry's body is found; is that

10:11:49 11 right?

10:11:49 12 A. Yes. Correct.

10:11:50 13 Q. Again, in his own name?

10:11:52 14 A. Yes.

10:11:52 15 Q. Was this a cargo van or passenger van?

10:11:54 16 A. Another cargo van.

10:11:55 17 Q. This van that was rented on October 2nd is returned on

10:11:59 18 October 3rd, right?

10:12:00 19 A. Correct.

10:12:06 20 Q. The body of Danny Fry that was discovered on October 2nd

10:12:10 21 headless and handless, was it immediately identified?

10:12:13 22 A. No. It was not identified until a year later.

10:12:16 23 Q. Okay. In fact, the DNA analysis was in 1999; is that

10:12:19 24 correct?

10:12:21 25 A. Yes.

10:12:22 1 Q. So that's almost four years later?

10:12:23 2 A. Uh-huh.

10:12:23 3 Q. Shortly before Mr. Karr's trial?

10:12:25 4 A. Correct.

10:12:25 5 Q. So, according to Mr. Waters' statement in 2001, a portion
10:12:39 6 of Mr. Karr's statement to police, and subsequently discovered
10:12:44 7 evidence, what happens during the trip between the Public
10:12:49 8 Storage unit and Camp Wood, Texas?

10:12:54 9 A. Mr. Karr accompanied Mr. Waters to Camp Wood to -- they
10:13:00 10 loaded the barrels from Public Storage and drove to Camp Wood
10:13:05 11 from Austin.

10:13:10 12 Q. And can you describe for the Court -- we'll see some
10:13:14 13 photographs in a minute. But what kind of property is
10:13:16 14 Camp Wood? What is the character and sort of description of
10:13:19 15 Camp Wood, Texas?

10:13:20 16 THE COURT: Let me interject a question here also.

10:13:23 17 THE WITNESS: Sure.

10:13:23 18 THE COURT: Where is Camp Wood? What county is it in
10:13:26 19 and --

10:13:26 20 THE WITNESS: Uvalde.

10:13:26 21 THE COURT: -- and how would you get there?

10:13:26 22 THE WITNESS: Uvalde County, sir.

10:13:26 23 THE COURT: No. Don't interrupt. Let me finish,
10:13:28 24 please.

10:13:28 25 How would you get there? Just describe what you

10:13:31 1 would do.

10:13:32 2 THE WITNESS: Okay. Well, there are two ways of
10:13:35 3 getting there. You can go I-35 through Uvalde to get there, or
10:13:38 4 you can go through Hill Country -- Bandera, Leakey, that
10:13:41 5 area -- and go through it there and get there.

10:13:43 6 THE COURT: So it's outside Uvalde?

10:13:45 7 THE WITNESS: Yes, sir.

10:13:46 8 THE COURT: Okay.

10:13:46 9 Q. (BY MR. HARDING) And I don't remember offhand, but it's a
10:13:48 10 couple of hundred miles? Is that too far?

10:13:52 11 A. It would be a couple of hundred miles. It's on -- the
10:13:55 12 property is at the Real-Uvalde County line, right there on the
10:14:01 13 river.

10:14:02 14 Q. Okay. So could you describe what the property is that
10:14:05 15 we're talking about?

10:14:06 16 A. Yes. It's about 5,000 acres of land. At the time we
10:14:10 17 thought it was a -- a friend's ranch, but it wound up being --
10:14:13 18 the bodies were actually on another ranch. But they were all
10:14:17 19 related.

10:14:17 20 Q. Is this a rural -- very rural area?

10:14:23 21 A. Yes. Very rural. Caliche rock, sheep country is what it
10:14:29 22 was.

10:14:30 23 Q. Not a lot of artificial lighting at night or anything like
10:14:32 24 that? very dark at night?

10:14:34 25 A. Very dark at night.

10:14:35 1 Q. So, according to some trial testimony, some of Mr. Waters
10:14:41 2 statement, and some subsequently discovered evidence by law
10:14:44 3 enforcement, what happens out there at Camp Wood with Mr. Karr
10:14:49 4 and Mr. Waters?

10:14:50 5 A. Okay. They drove to Camp Wood. They entered this
10:14:56 6 property in which they had the key -- the combination to the
10:14:59 7 lock at the front gate. And they drove into the property and
10:15:05 8 got past three gates. And they found a spot, which it's very
10:15:12 9 difficult to dig in, but they found a spot to dig in to create
10:15:17 10 a grave site.

10:15:18 11 Q. And in terms of going to this location and finding this
10:15:24 12 location, Patti Jo Steffens helped David Waters find it or sort
10:15:28 13 of brokered the introduction that allowed them to find it; is
10:15:32 14 that correct?

10:15:32 15 A. Yes. She was attending bar at the Poodle Dog Lounge
10:15:35 16 across from the Burnet Storage. And she had a person that she
10:15:39 17 knew there, and that person let her have access to the
10:15:42 18 property.

10:15:44 19 MR. HARDING: If we could jump ahead to slide 31
10:15:47 20 quickly.

10:15:47 21 A. Yes.

10:15:48 22 Q. What are we looking at here in slide 31?

10:15:51 23 A. Slide 31 is an aerial view. After we did search warrants
10:15:55 24 in Chicago, Austin, and Walled Lake, we went to -- came back to
10:16:06 25 Austin. The FBI took us up in a plane, and that's a picture

10:16:10 1 from the plane what was described in Mr. Karr's map that he had
10:16:16 2 drawn for us.

10:16:16 3 Q. So Mr. Karr drew a map -- Mr. Karr was interviewed in 1999
10:16:23 4 or 2000, is that right, prior to his trial?

10:16:26 5 A. '99, yes.

10:16:27 6 Q. And he, in addition to giving a statement, he drew a map
10:16:30 7 purporting to be where the bodies were?

10:16:33 8 A. Correct.

10:16:33 9 Q. And could you describe -- I think you may just have, but
10:16:38 10 can you describe how accurate that map was in comparison to
10:16:42 11 where the bodies were ultimately found?

10:16:44 12 A. It was very, very, very appropriate. This yellowed-in
10:16:49 13 section, you can see like a circle here on the left of the
10:16:51 14 roadway, that's a caliche mound, and that mound of caliche was
10:16:56 15 used, of course, to resurface the roads. But at the same time,
10:17:00 16 that mound was very significant to where we found the bodies
10:17:02 17 ultimately when we did.

10:17:05 18 MR. HARDING: And if we could go to the next slide,
10:17:06 19 please.

10:17:06 20 MR. ALDREDGE: Your Honor, may we take a quick
10:17:08 21 five-minute break?

10:17:09 22 THE COURT: Well, I was going to break at 10:30
10:17:12 23 anyway, so we'll go ahead and take that break a little early
10:17:15 24 and be in recess for 15 minutes.

10:17:17 25 (Recess)

10:40:35 1 (Open court)

10:40:35 2 THE COURT: Mr. Harding, you may continue your
10:40:36 3 direct-examination of the witness.

10:40:40 4 MR. HARDING: Thank you, Your Honor.

10:40:44 5 Q. Mr. Martin, we've been talking about a statement given by
10:40:48 6 David Waters in 2001 throughout this testimony, correct?

10:40:51 7 A. Correct.

10:40:52 8 Q. Can you describe for the Court the circumstances under
10:40:54 9 which Mr. Waters made that statement.

10:40:58 10 A. Yes. It was a decision by Mr. Waters to enter a plea. We
10:41:06 11 were going to -- he had been indicted in October. We were
10:41:10 12 going to go to trial in January of 2001. And during that
10:41:17 13 period of time, through negotiations, he decided that he would
10:41:20 14 plea, and we debriefed him.

10:41:22 15 Q. So let's talk about -- because I know Mr. Waters had a
10:41:28 16 bunch of charges at the time. Let's talk about what he pled to
10:41:32 17 for his role in this case.

10:41:33 18 A. Yes, sir.

10:41:34 19 Q. What was his plea agreement there?

10:41:36 20 A. His plea on what particular count?

10:41:38 21 Q. I'm sorry. With respect to this case only, what was
10:41:44 22 Mr. Waters' agreed sentence or plea agreement?

10:41:46 23 A. It was that he plead to 20 years on -- I think it was the
10:41:51 24 Hobbs Act. I'm not sure exactly.

10:41:53 25 Q. Sure. But, ultimately, Mr. Waters was going to do

10:41:57 1 20 years for this case?

10:41:58 2 A. Yes. And that was to be stacked on the other things that
10:42:00 3 he had in his previous past.

10:42:02 4 Q. Right. Which is what I wanted to talk about. You
10:42:03 5 mentioned earlier he had a gun case -- a federal gun case?

10:42:06 6 A. Yes.

10:42:06 7 Q. Do you recall what his sentence was in that case?

10:42:09 8 A. Eight years.

10:42:11 9 Q. And that was going to be consecutive to the 20 in this
10:42:14 10 case, is your understanding?

10:42:15 11 A. Yes.

10:42:16 12 Q. Mr. Waters was also facing a substantial state sentence at
10:42:19 13 the time; is that correct?

10:42:20 14 A. Correct.

10:42:21 15 Q. What was that sentence?

10:42:22 16 A. Based on the three strikes rule, he was to get 60 years in
10:42:26 17 state prison.

10:42:26 18 Q. Sixty, as in six-zero?

10:42:28 19 A. Yes, sir.

10:42:28 20 Q. And your understanding, again, was that that was going to
10:42:31 21 be -- or I should say the federal sentences were going to run
10:42:35 22 consecutive to that 60-year state sentence?

10:42:37 23 A. Yes. The state was going to be after he served his time
10:42:41 24 in federal prison.

10:42:41 25 Q. I'm sorry. He would start in federal prison and then go

10:42:44 1 to the state?

10:42:45 2 A. Yes. That was part of the reason: He wanted to get out
10:42:48 3 of the state system and get into the federal system.

10:42:50 4 Q. So any way you slice it, Mr. Waters is going to -- his
10:42:54 5 aggregate sentence was going to be pretty substantial?

10:42:57 6 A. Substantial.

10:42:58 7 Q. But, again, with respect to this case, he agreed to
10:43:01 8 20 years and a debrief; is that right?

10:43:04 9 A. Yes. And a disclosure of where the bodies were buried.

10:43:08 10 Q. Okay. And so we've referred to various parts of the
10:43:12 11 conversation throughout this testimony, which I believe is
10:43:15 12 attachment 5 to the sentencing memorandum. Fair to say that's
10:43:21 13 maybe a 12-hour conversation you had with Mr. Waters,
10:43:25 14 thereabouts?

10:43:25 15 A. It's probably over that.

10:43:27 16 Q. Okay.

10:43:27 17 A. It's two days.

10:43:28 18 Q. During the period of time he's giving a statement he also
10:43:32 19 takes investigators to the burial site; is that correct?

10:43:35 20 A. Yes. After that.

10:43:36 21 Q. After the statement was over?

10:43:38 22 A. Yes.

10:43:38 23 Q. Okay. Can you describe the circumstances or describe what
10:43:43 24 happened when you got there and what you did.

10:43:45 25 A. Yeah. The -- Mr. Waters was, of course, in custody at the

10:43:49 1 time. And two Bureau agents had him in tow, and we went to the
10:43:54 2 property.

10:43:54 3 THE COURT: Stop just a minute here. I want to back
10:43:57 4 up a little bit, because when I read everything that we have
10:44:00 5 here, I believe, if I looked at all of this correctly -- and I
10:44:06 6 did go over all of it -- there had been a search for the bodies
10:44:09 7 based on the statements that Mr. Karr had given, but the bodies
10:44:13 8 were not found. Let's go to those initial searches, then we
10:44:18 9 have the interjection of Mr. Waters' statement, and then that
10:44:21 10 search.

10:44:21 11 MR. HARDING: Yes, sir.

10:44:22 12 Q. So, as described earlier, Mr. Karr during his statement to
10:44:26 13 law enforcement, drew a map for you-all purporting to show
10:44:32 14 where the bodies were, correct?

10:44:33 15 A. Correct.

10:44:33 16 Q. And, ultimately, as events proved out, it was a very
10:44:37 17 accurate map?

10:44:38 18 A. Very accurate.

10:44:39 19 Q. Nevertheless, describe for the Court the attempts that
10:44:42 20 were made to search for the bodies and the results?

10:44:44 21 A. Yes. We executed a search warrant on what we thought was
10:44:47 22 this property and wound up being not the property. So
10:44:50 23 Mr. Carruth and I went and talked to the landowner and got a
10:44:53 24 consent searched, so we searched this property.

10:44:55 25 We used ground search radar, we used cadaver dogs,

10:45:01 1 and that was Easter Sunday, I think, of 1999. And we didn't
10:45:05 2 find anything at that point in time.

10:45:07 3 Q. This was a multi-day search?

10:45:08 4 A. Multi-day search, yes.

10:45:10 5 Q. Was there a second subsequent search between that first
10:45:13 6 one and the one that occurred after Mr. Waters' statement?

10:45:16 7 A. There were two others instances that we went there, and
10:45:20 8 then finally the one that Mr. Waters took us to where the
10:45:23 9 bodies were buried and tried to identify.

10:45:27 10 MR. HARDING: Could we move to the next slide,
10:45:28 11 please.

10:45:29 12 Q. That would be January 27th of 2001; is that correct?

10:45:31 13 A. Correct.

10:45:32 14 Q. What's depicted here in this slide?

10:45:35 15 A. This is the general area to show where the bodies -- or
10:45:38 16 the area in which the bodies were buried. And the cadaver dog
10:45:44 17 that we had with us went over this area after Mr. Karr --
10:45:47 18 Mr. Waters identified the general area, and come to find out
10:45:51 19 this -- this information or these -- this spot here was
10:45:54 20 directly across or a little bit across from this caliche mound
10:45:58 21 that we were talking about. So this is where the bodies were
10:46:01 22 buried. The cadaver dog hit on a spot, the FBI probed the
10:46:07 23 spot, and next thing you know we're digging up and we find a
10:46:10 24 femur.

10:46:12 25 MR. HARDING: This is slide 32 for the record. If we

10:46:15 1 could move to slide 33, please.

10:46:17 2 Q. Describe what we're looking at in slide 33, sir.

10:46:20 3 A. Yes. This is the site of the bodies and the removal of
10:46:24 4 the body parts. This is -- I think that part right there would
10:46:28 5 be Dr. Glass removing Madalyn Murray O'Hair's skull.

10:46:35 6 MR. HARDING: And if we could move to the next slide,
10:46:37 7 please.

10:46:38 8 Q. What are we looking at in slide 34?

10:46:40 9 A. Yes. This is Madalyn Murray O'Hair laying in the grave.
10:46:44 10 And the reason why I know that is because -- you can't see it
10:46:46 11 on the screen, but before where this head is down here, the
10:46:49 12 white portion, there is a hip replacement that I was able to
10:46:53 13 identify at Brackenridge Hospital as her having. So that's how
10:46:59 14 we identified Madalyn Murray O'Hair.

10:47:01 15 Q. And, ultimately, the O'Hairs were identified not only
10:47:05 16 through distinguishing marks like that, but dental records and
10:47:08 17 things of that nature, correct?

10:47:10 18 A. Correct, yes.

10:47:10 19 MR. HARDING: If we could move o the next slide.

10:47:11 20 Q. What are we looking at here in slide 35, I believe it is?

10:47:13 21 A. That's the skull and remains of Danny Fry.

10:47:16 22 Q. Also. Found in the same burial spot as the O'Hairs?

10:47:21 23 A. Yes.

10:47:21 24 Q. Consistent with the information given to you by

10:47:24 25 David Waters?

10:47:25 1 A. Correct.

10:47:26 2 Q. And then slide 36, same thing, correct?

10:47:29 3 A. Correct.

10:47:40 4 MR. HARDING: Mr. Martin, thank you very much.

10:47:42 5 Judge, we will pass the witness.

10:47:43 6 THE COURT: Cross-examination?

10:47:45 7 MS. WILLIAMS: Judge, is it okay if I use this
10:47:46 8 podium? I can't see Mr. Martin from that podium.

10:47:49 9 THE COURT: You can come to that podium so you can
10:47:52 10 see him.

10:47:53 11 MS. WILLIAMS: All right.

10:47:55 12 **CROSS-EXAMINATION**

10:47:55 13 **BY MS. WILLIAMS:**

10:47:55 14 Q. Mr. Martin, you know me. We've done there before,
10:47:57 15 correct --

10:47:57 16 A. Correct.

10:47:58 17 Q. -- at the trial?

10:48:00 18 Let me -- I just want to clear up an inconsistency to
10:48:05 19 start with. This map that you testified that Gary Karr drew,
10:48:09 20 that's not actually correct, is it? Mr. Karr didn't draw the
10:48:13 21 map.

10:48:13 22 A. No. My understanding is Mr. Karr drew the map.

10:48:16 23 Q. Were you there?

10:48:17 24 A. No. Mr. --

10:48:19 25 Q. Do you --

10:48:19 1 THE COURT: No. Let him finish his answer before you
10:48:20 2 ask the next question.

10:48:22 3 Q. (BY MS. WILLIAMS) Okay. This is a yes-or-no question.
10:48:23 4 Were you there?

10:48:24 5 A. No. Not at the time.

10:48:25 6 Q. Okay. Do you recall the testimony at trial -- you sat
10:48:28 7 through the trial testimony, did you not?

10:48:31 8 A. Do I recall what at the testimony? I'm sorry.

10:48:32 9 Q. You sat through the trial testimony, did you not?

10:48:34 10 A. Oh, yes. Yes, ma'am.

10:48:36 11 Q. You recall the testimony at trial, there was some
10:48:38 12 confusion because I thought that Mr. Karr drew the map. But,
10:48:41 13 in fact, Detective Bjorklund, who was there at the time that he
10:48:45 14 was questioned, actually drew the map. Do you not remember
10:48:48 15 that?

10:48:48 16 A. No, I don't.

10:48:49 17 Q. All right. Do you take issue with my recollection of the
10:48:52 18 facts?

10:48:53 19 A. If that's what the transcript says, that's all I can say.

10:48:58 20 Q. Okay. You never offered to take Gary Karr to look for the
10:49:04 21 bodies, did you?

10:49:05 22 A. No.

10:49:06 23 Q. I want to talk a little bit about this statement that
10:49:09 24 you've testified about, Mr. Waters' statement. I think you
10:49:13 25 just told us that it lasted two days -- more than 12 hours,

10:49:20 1 correct?

10:49:20 2 A. Correct.

10:49:21 3 Q. You've told us that David Waters was resentful of

10:49:25 4 Gary Karr?

10:49:28 5 A. That's what he said, yes.

10:49:29 6 Q. And resentful of Patti Jo Steffens?

10:49:31 7 A. Yes.

10:49:31 8 Q. He was angry about statements that they had made leading

10:49:35 9 up to and during this trial?

10:49:38 10 A. I don't recall that.

10:49:40 11 Q. All right. You also told us that there were

10:49:48 12 inconsistencies in this statement, do you recall?

10:49:49 13 A. Yes.

10:49:50 14 Q. Did you detail those inconsistencies for anyone?

10:49:53 15 A. No. We were not able to get to those inconsistencies.

10:49:58 16 Q. What does that mean?

10:49:59 17 A. That means at the -- at the end of the second day,

10:50:02 18 Mr. Waters decides he does not want to talk anymore.

10:50:06 19 Q. Okay. Well, have you listened to the tapes since then?

10:50:09 20 A. Yes.

10:50:10 21 Q. Did you at that time make note of the inconsistencies of

10:50:15 22 the statement of David Waters?

10:50:16 23 A. No, I did not.

10:50:18 24 Q. All right. At the time that David Waters gave this

10:50:24 25 statement, he was facing, I think we just heard, eight years in

10:50:27 1 federal custody plus sixty years in state custody?

10:50:31 2 A. Correct.

10:50:31 3 Q. Now, to be fair, sixty years in state custody on a theft

10:50:35 4 charge is probably six years. Agreed?

10:50:40 5 A. I don't know those numbers.

10:50:41 6 Q. Isn't it true that one of David Waters' main motivations

10:50:49 7 for agreeing to a plea in federal court and agreeing to debrief

10:50:53 8 with you and other agents was his desire to get out of state

10:50:57 9 custody?

10:50:57 10 A. Correct.

10:50:58 11 Q. And that was part of the plea bargain?

10:51:00 12 A. That's what I understood.

10:51:01 13 Q. All right. So, in addition to what you told Mr. Harding,

10:51:08 14 the agreement was a twenty-year sentence, he would debrief, and

10:51:12 15 he would do his time in federal custody first?

10:51:16 16 A. That's my understanding, yes.

10:51:18 17 Q. All right. Did the debrief take place after the plea?

10:51:27 18 A. After the what?

10:51:28 19 Q. After the plea.

10:51:30 20 A. I'm not sure the timing. I'm just not sure what the

10:51:37 21 timing was.

10:51:37 22 Q. All right. At the time that he gave his statement, he

10:51:41 23 also admitted to a murder that took place in Illinois; is that

10:51:46 24 correct?

10:51:46 25 A. He was questioned about it. I don't know if he -- I don't

10:51:49 1 recall if he actually said that he had done it.

10:51:52 2 Q. You don't recall?

10:51:53 3 A. I don't recall it.

10:51:54 4 Q. With regard to David Waters' statements about how the
10:52:09 5 O'Hairs were killed or who killed them or who dismembered them,
10:52:15 6 there is no way to corroborate that, correct?

10:52:18 7 A. No. I mean, the only two parties would have been there --
10:52:23 8 everybody else is dead -- would be Mr. Karr and Mr. Waters.

10:52:26 9 Q. That's correct. And so he can say whatever he wants to at
10:52:29 10 that point?

10:52:29 11 A. Right. But I think there were circumstantial things that
10:52:33 12 allowed these to fit what was happening.

10:52:35 13 Q. Well, there were certain things about where things
10:52:39 14 happened that could be corroborated, correct?

10:52:41 15 A. Correct. And we did.

10:52:42 16 Q. There were certain -- but as to who did what, there is no
10:52:47 17 way to corroborate that?

10:52:48 18 A. No.

10:52:49 19 Q. As to his -- what you've testified today as to Waters'
10:53:01 20 statement about how and where Danny Fry was killed, that's
10:53:06 21 absolutely incorrect, though, isn't it?

10:53:11 22 A. Absolutely incorrect? I don't think so.

10:53:12 23 Q. Well, do you not recall that the Dallas Sheriff's
10:53:16 24 Department did an extensive investigation into the death of
10:53:19 25 Danny Fry?

10:53:20 1 A. I did not have access to that. That wasn't something that
10:53:24 2 meant anything to me at that point in time.

10:53:26 3 Q. Did you -- after David Waters' statement, did you go back
10:53:29 4 and try to corroborate whether or not that part of it could
10:53:32 5 have been true?

10:53:33 6 A. No, I did not.

10:53:34 7 Q. Do you recall that Detective Bjorklund testified that
10:53:37 8 there were no bullets, no casings, no bullet fragments found at
10:53:43 9 that location, despite an extensive search?

10:53:47 10 A. I think he did say that, yes.

10:53:49 11 Q. Do you recall that there was no blood evidence there?

10:53:51 12 A. There was no blood evidence, which is odd.

10:53:54 13 Q. So it's absolutely impossible for Danny Fry to have been
10:53:59 14 shot and dismembered at the location where his body was found,
10:54:02 15 correct?

10:54:03 16 MR. HARDING: I'll object to argumentative, Judge.

10:54:06 17 THE COURT: Overruled.

10:54:07 18 You may answer the question.

10:54:08 19 A. I have no way of knowing. All I can say is that there is
10:54:12 20 an absence of blood. As far as a shell casing, I don't know
10:54:16 21 anything about that. Obviously, there was a bullet in the back
10:54:19 22 of the head because the bullet hole was coming out the front of
10:54:22 23 the head -- the skull. We have it.

10:54:23 24 Q. And you don't think that would create any blood evidence?

10:54:26 25 A. I would think it would.

10:54:27 1 Q. And wouldn't you think that dismembering the head and the
10:54:32 2 hands of someone, even after they were dead, would create blood
10:54:35 3 evidence?

10:54:35 4 A. I would think it would.

10:54:36 5 Q. But there wasn't any there, was there?

10:54:38 6 A. As far as I would told, there was not. I did not look at
10:54:41 7 any reports, so I don't know about that.

10:54:43 8 Q. There was trial testimony about that, do you recall?

10:54:45 9 A. I mean, the trial was a long time ago, ma'am.

10:54:47 10 Q. It was a long time ago, wasn't it?

10:54:49 11 A. I don't know. Yeah.

10:55:03 12 Q. Both David Waters and Gary Karr were arrested March 25th
10:55:07 13 of 1999, correct?

10:55:08 14 A. Yes.

10:55:08 15 Q. And after that time the government, of which you were a
10:55:13 16 part of that team, made the decision to first indict and try
10:55:17 17 Gary Karr?

10:55:18 18 A. Correct.

10:55:18 19 Q. You've already testified that there was no opportunity --
10:55:22 20 Gary Karr was never given an opportunity to show you where the
10:55:25 21 bodies were, correct, to take you there?

10:55:29 22 A. That's correct.

10:55:29 23 Q. David Waters had a previous probation in the state case
10:55:37 24 that had to do with the O'Hairs?

10:55:39 25 A. Yes.

10:55:40 1 Q. And then prior to his federal sentencing, he was sentenced
10:55:43 2 in that case on a revocation to sixty years?

10:55:46 3 A. Yes.

10:55:46 4 Q. But the victims of that case was -- the victim in that
10:55:49 5 case was Madalyn Murray O'Hair?

10:55:52 6 A. Yes.

10:55:52 7 Q. And the Atheist Organization?

10:55:54 8 A. Right.

10:55:54 9 Q. David Waters was the mastermind of this plot, no doubt?

10:55:58 10 A. No doubt, yes.

10:55:59 11 Q. You've testified today that Gary Karr was a bit player,
10:56:04 12 correct?

10:56:04 13 A. Well, he was his right-hand man.

10:56:06 14 Q. Did you not just testify under oath about 30 minutes ago
10:56:10 15 that Gary Karr was a bit player?

10:56:13 16 A. Well, that word was a slip.

10:56:14 17 Q. Did you use that word?

10:56:15 18 A. I used the word.

10:56:16 19 Q. All right. So the government decided to try the little
10:56:21 20 fish to get to the big fish, right?

10:56:24 21 A. I would say -- I wouldn't say a little fish. I'll say a
10:56:29 22 person who is involved as deeply as the person. It's just that
10:56:33 23 they're not in charge.

10:56:35 24 Q. Well, he wasn't the mastermind, correct?

10:56:38 25 A. Yeah. But average --

10:56:39 1 Q. Right?

10:56:40 2 A. Yes, ma'am.

10:56:41 3 Q. All right.

10:56:41 4 THE COURT: Don't interrupt one another. Let him
10:56:44 5 finish --

10:56:44 6 MS. WILLIAMS: Yes, sir.

10:56:44 7 THE COURT: -- and then you can start your next
10:56:45 8 question, Ms. Williams.

10:56:47 9 A. What I was going to say is every general needs people to
10:56:50 10 help him, and that's what you have here.

10:56:52 11 Q. Fair enough.

10:56:55 12 The government didn't like the result of Gary Karr's
10:56:57 13 trial?

10:56:58 14 A. I have no -- I have no idea where that comes from. Was
10:57:02 15 that a question or a statement.

10:57:03 16 Q. That was a question.

10:57:05 17 A. The government didn't have any opinion. We had -- we won
10:57:09 18 the case. Mr. Waters -- I mean, Mr. Karr was sentenced, and
10:57:13 19 that was it. We proceeded to then pursue Mr. Waters.

10:57:19 20 Q. So after -- in 2001 the government made a deal with
10:57:25 21 David Waters that, if he'd showed you the bodies, admit to
10:57:30 22 these four murders, you would agree to transfer him to state --
10:57:33 23 to federal custody from state custody and give him twenty
10:57:37 24 years?

10:57:37 25 A. That's what the government agreed to, as far as I know.

10:57:40 1 Q. All right. Do you recall that David Waters also was
10:57:56 2 implicated in two other previous murders, including one of
10:57:59 3 his -- an ex-wife?

10:58:01 4 A. I remember seeing an article about that, yes.

10:58:03 5 Q. There was no questions about that at the debrief?

10:58:05 6 A. No. It was not a major concern at that point in time. We
10:58:09 7 were concerned about the Madalyn Murray O'Hair case.

10:58:13 8 Q. I want to go back just to one detail of this statement.
10:58:21 9 You've testified that David Waters was inconsistent and that
10:58:24 10 there were lots of times when you would have to discuss things
10:58:32 11 that you knew of that were facts with him and kind of bring him
10:58:36 12 back to what -- what you thought reality was?

10:58:38 13 A. Yes. That's part of what we had to do.

10:58:41 14 Q. And one of those -- was one of those the fact that the
10:58:45 15 trial testimony had shown that the van that had been rented
10:58:51 16 couldn't have been driven to Dallas to deposit the body of
10:58:56 17 Danny Fry because the mileage didn't permit that. Do you
10:59:00 18 remember that?

10:59:02 19 A. All I can say about that is that my understanding is they
10:59:05 20 went in the Camaro, not in the van.

10:59:07 21 Q. That's correct. That's where I wanted to get. Whose
10:59:11 22 Camaro was it?

10:59:12 23 A. David Waters'.

10:59:12 24 Q. Okay. Did he first tell you that they went in a van?

10:59:15 25 A. I don't recall. I don't think -- he may have, but we knew

10:59:19 1 that he went in the Camaro.

10:59:20 2 Q. How did you know he went in the Camaro?

10:59:22 3 A. Because he later told us that when they cut the head and
10:59:26 4 hands of Danny Fry off, they put the head and hands in the back
10:59:29 5 seat of the Camaro and that they were concerned that they'd get
10:59:32 6 stopped by the police because they may have had a flat tire and
10:59:36 7 somebody would see what was in there.

10:59:38 8 Q. And that somehow in your mind corroborated that it was the
10:59:41 9 Camaro?

10:59:42 10 A. Yes. And also at that point in time, the second van had
10:59:54 11 been returned and the third van was -- the third van was rented
11:00:07 12 on the 2nd of October, which is after Danny Fry was dead.

11:00:13 13 MS. WILLIAMS: I don't have anything further.

11:00:14 14 MR. HARDING: Nothing further from the government,
11:00:16 15 Judge.

11:00:17 16 THE COURT: All right. You may step down.

11:00:23 17 THE WITNESS: Thank you. And I think we've got an
11:00:28 18 open door for you, Mr. Martin. You don't have to test your
11:00:31 19 agility.

11:00:32 20 THE COURT: Mr. Harding, other witnesses for the
11:00:34 21 government?

11:00:34 22 MR. HARDING: No, Your Honor.

11:00:35 23 THE COURT: Does the defense have any witnesses to
11:00:37 24 present?

11:00:40 25 MR. ALDREDGE: No, Your Honor.

11:00:41 1 THE COURT: All right. Are you ready to argue?

11:00:47 2 MR. HARDING: Yes, Your Honor.

11:00:48 3 THE COURT: All right. Let me run through a few
11:00:51 4 preliminary things, then. As the record previously reflected,
11:00:59 5 we're here today for a resentencing in this case. The
11:01:02 6 defendant, Gary Paul Karr, was originally sentenced on
11:01:07 7 August the 17th, 2000 by Judge Sparks after having been found
11:01:13 8 guilty on counts two, three, four, and five of a five-count
11:01:19 9 indictment. He was acquitted on count one. That sentence was
11:01:24 10 vacated by Judge Sparks as to counts two and three on which the
11:01:32 11 defendant had been sentenced to life imprisonment on each of
11:01:36 12 those counts. He was sentenced to 115 months on counts four
11:01:41 13 and five, those sentences to run concurrently.

11:01:48 14 After Judge Sparks vacated the sentences on counts
11:01:53 15 two and three, he retired from the bench -- although I believe
11:02:00 16 his official term is "inactive senior status," and I'm not
11:02:06 17 really certain what that means. But I think if you want to put
11:02:09 18 too fine a point on it, it wasn't actually retirement -- and
11:02:13 19 the case found its way to me, and that's how I have ended up
11:02:19 20 conducting this resentencing hearing.

11:02:23 21 Let me ask Mr. Karr, and he can answer from there:
11:02:30 22 Mr. Karr, have you had sufficient time to review the revised
11:02:36 23 presentence investigation report, the last revision being
11:02:40 24 March the 2nd of 2021, in this case with your lawyers?

11:02:51 25 THE DEFENDANT: Yes.

11:02:53 1 THE COURT: Do you understand that under the
11:02:56 2 guidelines established by the United States Sentencing
11:02:59 3 Commission, which are advisory to this Court, the probation
11:03:02 4 department has computed your total offense level as 43 and your
11:03:09 5 criminal history category as five. And so with regard to
11:03:17 6 counts two and three, that means that I could sentence you to
11:03:22 7 480 months confinement in the Bureau of Prisons, if I determine
11:03:27 8 that a guideline sentence was an appropriate sentence to
11:03:29 9 impose, a term of supervised release of three years on each of
11:03:36 10 counts two and three, a fine of \$1,183,132, restitution in the
11:03:45 11 amount of \$541,266.79, and a special assessment of \$50 for
11:03:58 12 count two and \$50 for count three, for a total special
11:04:01 13 assessment of \$100?

11:04:03 14 THE DEFENDANT: Yes, Your Honor. I understand that.
11:04:24 15 But I paid the assessment.

11:04:26 16 THE COURT: I understand. Whatever the credits are,
11:04:29 17 the credits are.

11:04:31 18 THE DEFENDANT: Yes, sir.

11:04:32 19 THE COURT: But we're resentencing on both of the
11:04:34 20 counts. So do you also understand that under the statute under
11:04:39 21 which you were convicted on counts one and two, I could
11:04:43 22 sentence you to 20 years confinement in the Bureau of Prisons
11:04:47 23 on count two, 20 years confinement in the Bureau of Prisons on
11:04:50 24 count three, a term of supervised release of three years on
11:04:55 25 each of counts two and three, a fine of \$1,183,132, restitution

11:05:05 1 in the amount of \$541,266.79, and, again, a special assessment
11:05:12 2 of \$50 per count for a total special assessment of \$100, which
11:05:17 3 I do understand you've already paid. But do you understand I
11:05:20 4 could sentence you to those items?

11:05:22 5 THE DEFENDANT: Yes, sir.

11:05:23 6 THE COURT: Does the government have objection to the
11:05:25 7 presentence investigation report?

11:05:26 8 MR. HARDING: No, Your Honor.

11:05:28 9 THE COURT: Does the defendant have objection to the
11:05:30 10 presentence investigation report?

11:05:34 11 MR. ALDREDGE: Yes, Your Honor.

11:05:35 12 THE COURT: All right. Mr. Aldredge, do you desire
11:05:37 13 to be heard on your objections?

11:05:43 14 MR. ALDREDGE: I do, Your Honor. Your Honor,
11:05:46 15 briefly. Ms. Williams will make argument on the facts.

11:05:54 16 We have objected to the cross-reference that's
11:05:57 17 suggested by the PSR on the basis of both factual insufficiency
11:06:02 18 and that it's in violation of the United States Constitution.

11:06:06 19 While the constitutional objection is foreclosed, we
11:06:10 20 raise it for possible future review. I would note, Your Honor,
11:06:15 21 as we pointed out in our amended sentencing memorandum, there
11:06:20 22 are a number of circuit judges around the country that have
11:06:24 23 expressed their dissatisfaction and disagreement with the rule
11:06:29 24 of *Watts v. United States*. There are at least three current
11:06:35 25 Supreme Court Justices that have likewise expressed their

11:06:40 1 displeasure with that rule, including Justice Thomas, and then
11:06:47 2 Judges Kavanaugh and Gorsuch when they were circuit judges.

11:06:54 3 THE COURT: And *Watts* states what?

11:06:58 4 MR. ALDREDGE: Well, *Watts* states that -- it was a
11:07:00 5 divided court that held taking acquitted conduct into account
11:07:04 6 at sentencing did not offend the double jeopardy clause of the
11:07:08 7 Fifth Amendment. That was the issue there. Nonetheless, since
11:07:15 8 then, numerous courts of appeals have assumed that *Watts*
11:07:19 9 controls the outcome of both Fifth and Sixth Amendment
11:07:23 10 challenges to the use of acquitted conduct at sentencing.

11:07:26 11 And according to numerous circuit judges and a
11:07:35 12 dissent from denial of cert. in 2014 in *Jones v. United States*,
11:07:41 13 Justice Scalia, writing for himself and Justices Thomas and
11:07:47 14 Ginsburg, said: No. That, in fact, *Watts* was limited to the
11:07:49 15 double jeopardy clause of the Fifth Amendment; that it in fact
11:07:54 16 did not control the outcome of the issue of whether it would
11:07:59 17 violate the due process clause of the Fifth Amendment or the
11:08:03 18 Sixth Amendment right to jury trial. And we have cited the
11:08:08 19 *Jones v. United States* cert. petition denial.

11:08:13 20 I would point out, Your Honor, that there was a case
11:08:16 21 in the 2019 term in the Supreme Court, *Asaro v. United States*
11:08:23 22 *of America*. The cert. denial was at 140 S.C. 1104 in 2020.
11:08:31 23 It's Number 19-107 under the Supreme Court docket.

11:08:35 24 That petition was filed in July of '19 and spent
11:08:39 25 seven months at the Supreme Court, as the Supreme Court asked

11:08:42 1 for briefing and there were numerous amicus briefs filed. And
11:08:48 2 then, ultimately, seven months later, in February of '20, the
11:08:52 3 court denied cert.

11:08:53 4 I can tell you that, as we indicated in our amended
11:08:59 5 sentencing memorandum, there has been a push in the
11:09:04 6 United States Congress to pass a bill prohibiting the
11:09:06 7 sentencing on acquitted conduct. And, as a matter of fact,
11:09:11 8 last -- after I filed my sentencing memorandum, we found out
11:09:15 9 that -- it looks like this is an article from *Law 360* last
11:09:18 10 Friday. Evidently, last Thursday on the 4th, Senators Durbin
11:09:25 11 and Grassley reintroduced the same bill they had introduced in
11:09:29 12 2019. Again, it was a bill to bar judges from considering
11:09:34 13 acquitted conduct at sentencing.

11:09:36 14 So, while it is -- the issue is foreclosed, we
11:09:44 15 believe that it is a -- there is growing momentum among the
11:09:51 16 judiciary, among the Congress, to ban it. We believe that it
11:09:57 17 is a suspect practice that shouldn't be followed in this case,
11:10:00 18 especially when it changes so dramatically the sentencing
11:10:05 19 guideline. And so our position is that, while the legal
11:10:13 20 objection may be foreclosed, all of the concerns that have been
11:10:16 21 raised in the judiciary should inform this Court's analysis and
11:10:21 22 perspective about the accuracy and validity of the facts that
11:10:26 23 the government wants the Court to rely on and the factual
11:10:35 24 conclusions, given how remote they are, given that the Court
11:10:38 25 hasn't had the opportunity to see the witnesses, and given how

11:10:41 1 dramatically they raise the sentencing guidelines in this case.

11:10:45 2 Your Honor, it is simply the case that the government
11:10:54 3 wants you to second-guess the jury's verdict in this case. And
11:10:58 4 there just isn't the information to do that. You have the
11:11:03 5 self-serving, changing statements, in part lies, conflicted
11:11:14 6 statements that eventually came around to a version that the
11:11:18 7 government settled on.

11:11:19 8 THE COURT: For right now be restricted to your
11:11:21 9 objections.

11:11:21 10 MR. ALDREDGE: All right. The objection is factual
11:11:25 11 sufficient -- insufficiency, and I've made my argument that it
11:11:30 12 violates the due process clause of the Fifth Amendment and the
11:11:34 13 Sixth Amendment right to a jury trial to apply the
11:11:37 14 cross-section of the case.

11:11:38 15 Now, there's also a factual insufficiency component
11:11:42 16 to it that I'll let Ms. Williams address.

11:11:47 17 THE COURT: Now. Because I want to take up the
11:11:50 18 objections now, and then we'll see where we're going with that.

11:11:53 19 MS. WILLIAMS: So, Judge, I mean, I think I made
11:11:58 20 clear on my cross-examination, I mean, the government decided
11:12:01 21 to now go back to the well after the fact, without any
11:12:06 22 cross-examination, without any really determination about
11:12:10 23 corroboration or any idea of the truthfulness of Mr. Waters'
11:12:15 24 statement and has taken it now as the gospel truth. Not the
11:12:20 25 trial testimony and not anything else, but whatever

11:12:23 1 David Waters said.

11:12:24 2 THE COURT: Now, why is that an objection to the
11:12:28 3 presentence investigation report as opposed to an argument you
11:12:31 4 would make on what sentence I should impose?

11:12:34 5 MS. WILLIAMS: Just that the -- the facts that is
11:12:38 6 legally insufficient to make determination for purposes of the
11:12:42 7 sentencing guidelines.

11:12:47 8 THE COURT: Because they are now at this sentencing
11:12:53 9 hearing putting on evidence from a subsequent interview of
11:12:56 10 Mr. Waters that occurred after the trial and sentencing the
11:13:01 11 first time?

11:13:02 12 MS. WILLIAMS: That's correct. After the trial; that
11:13:04 13 it was not attempted to be corroborated; and that Mr. Waters --
11:13:08 14 I mean, it can't be corroborated because Mr. Waters has been
11:13:11 15 dead -- I think I said 16, but I think, accurately, it's 18
11:13:14 16 years.

11:13:15 17 THE COURT: Thank you. Anything further?

11:13:18 18 MS. WILLIAMS: No, Judge.

11:13:19 19 THE COURT: Mr. Harding, the government's argument as
11:13:21 20 to the objections? And all I'm dealing with right now is the
11:13:25 21 objections.

11:13:26 22 MR. ALDREDGE: Your Honor, if I may, I'm sorry.
11:13:29 23 agent Martin did -- Mr. Martin doesn't recall from the
11:13:35 24 documents that the government's provided us in discovery that
11:13:39 25 Mr. Waters admitted to a -- subsequent to the two-day interview

11:13:46 1 admitted to another murder in Illinois. And that's part of the
11:13:50 2 discovery that the government has provided us. In addition to
11:13:54 3 which he was suspected in two other murders, including two
11:13:58 4 women, one of whom was an ex-wife of his.

11:14:01 5 So I just -- I put that out there. The government
11:14:03 6 doesn't object to my proffering that. It was in the discovery
11:14:09 7 the government provided us for resentencing, and it goes to the
11:14:12 8 credibility of the secondhand testimony from Mr. Waters.

11:14:17 9 THE COURT: All right. Thank you. Now Mr. Harding.

11:14:20 10 MR. HARDING: Judge, this is a little bit tricky
11:14:23 11 because they've brought in facts, and, of course, I would argue
11:14:28 12 there's a larger argument, the facts. But I'll try to limit it
11:14:31 13 to just the objections.

11:14:32 14 With respect on the legal objection Mr. Aldredge
11:14:35 15 concedes is foreclosed, in addition to the cases that he cited,
11:14:42 16 *United States v. Grace*, which is a 2016 Fifth Circuit case.
11:14:47 17 It's an unpublished case. It's 640 F. App'x 298. They address
11:14:53 18 a very similar challenge. And just citing to the denial of
11:14:58 19 cert. in *Jones* and things of that nature.

11:15:00 20 But they point out that *United States v. Melancon*,
11:15:03 21 which is 662 F.3d 708, from 713 to 714, Fifth Circuit 2011,
11:15:13 22 controls and controls the notion that *Watts* still applies and
11:15:18 23 controls the issue and forecloses that argument.

11:15:21 24 With respect to just the general principle of the
11:15:26 25 facts of Mr. Waters' statement shouldn't be considered by this

11:15:29 1 Court at all, which I believe is what Ms. Williams is
11:15:33 2 essentially arguing, that flies in the face of 18 USC 3661. It
11:15:39 3 flies in the face of the sentencing guidelines, Section 1B1.4.
11:15:44 4 Thirteen -- excuse me -- 3661 states in part that no limitation
11:15:48 5 may be placed on the information concerning the background,
11:15:51 6 character, and conduct of a person convicted of an offense
11:15:57 7 which a court of the United States may receive and consider for
11:15:59 8 the purpose of imposing an appropriate sentence.

11:16:01 9 Obviously, Your Honor is in the position of having to
11:16:04 10 weigh the credibility. And you may well decide that
11:16:09 11 Mr. Waters' statement isn't credible. But that doesn't mean --
11:16:12 12 I believe the law requires you to at least consider it. And I
11:16:16 13 believe that's sufficient to defeat the legal and factual
11:16:21 14 objections raised by the defense.

11:16:23 15 THE COURT: Mr. Aldredge, Ms. Williams, your
11:16:25 16 objections. Do you want to respond?

11:16:29 17 MR. ALDREDGE: Your Honor, what we have said and, in
11:16:33 18 particular, what Ms. Williams has said, is that we're not
11:16:38 19 denying any admissibility at sentencing of really any
11:16:43 20 information, including Mr. Martin's summary of the Waters
11:16:48 21 statement.

11:16:49 22 What we're saying is that it's insufficient to meet
11:16:54 23 the government's burden to support the cross-reference to the
11:16:57 24 murder guideline; that it is not sufficient to overcome what
11:17:04 25 should be the presumption of reliability of the jury's verdict

11:17:08 1 in this case. So that's the objection.

11:17:10 2 THE COURT: All right. Mr. Harding, I'll hear from
11:17:12 3 you on that, and then you-all will still get the last word. I
11:17:16 4 want this fully developed.

11:17:17 5 MR. HARDING: Judge, I have plenty of lengthy
11:17:19 6 argument about why the cross-reference should apply. And if
11:17:21 7 you want to hear that now, it will also encompass what I think
11:17:24 8 the appropriate sentence is in Mr. Karr's case.

11:17:26 9 THE COURT: Since it's linked to the objections, I
11:17:30 10 want to deal with the objections now.

11:17:31 11 MR. HARDING: Okay.

11:17:31 12 THE COURT: And I will hear from you on that
11:17:33 13 regardless of how lengthy it is.

11:17:35 14 MR. HARDING: Sure. I'll try to keep it brief.
11:17:38 15 Contrary to what the defense is suggesting, we are not merely
11:17:41 16 relying on the statement of Mr. Waters to prove up the
11:17:45 17 cross-reference to the murder guideline.

11:17:49 18 It is undisputed that the O'Hairs have -- were taken
11:17:53 19 to the Warren Inn for a period of over a month and had over
11:17:58 20 six -- almost 700,000 -- well, almost \$700,000 taken from them,
11:18:03 21 and that money wound up in the pockets of Mr. Karr, Mr. Waters,
11:18:07 22 Mr. Fry, their loved ones, and, ultimately, some coin thieves
11:18:13 23 who ended up stealing all the coins out of the storage unit.

11:18:17 24 THE COURT: Let me ask an aside from maybe you or
11:18:20 25 Agent Martin. Were those people ever apprehended?

11:18:24 1 MR. HARDING: They were, and they testified at trial.

11:18:26 2 THE COURT: Okay.

11:18:27 3 MR. HARDING: And they testified -- and Ms. Williams
11:18:29 4 will remember this more than I do. But they testified -- and
11:18:31 5 Mr. Martin would -- they disbursed something in the
11:18:35 6 neighborhood of \$400,000 or more than that. They said they
11:18:39 7 basically sold off the coins over time.

11:18:42 8 But they testified, and that's in fact one of the
11:18:45 9 reasons we know that the coins wound up in that Burnet Road
11:18:48 10 Storage unit, beyond the statements of Mr. Waters, is that
11:18:52 11 these kids -- I think they were kids -- all came in and
11:18:54 12 testified we kind of just -- we were in the business of
11:18:57 13 knocking over storage units. We mad a master code. An, lo and
11:19:01 14 behold, one day we hit the mother lode and we took 500 grand in
11:19:03 15 coins.

11:19:03 16 THE COURT: Couldn't believe their good fortune.

11:19:08 17 MR. HARDING: Yeah. They sure did.

11:19:10 18 But that being said, Judge, the question before the
11:19:12 19 Court in terms of applying the cross-reference is: There are
11:19:16 20 two theories of liability by which Mr. Karr will be held --
11:19:20 21 should be held accountable under the guidelines for the murders
11:19:23 22 of the O'Hairs and Danny Fry.

11:19:25 23 One is whether if he personally was involved in some
11:19:29 24 way. His personal involvement doesn't meant that he had to be
11:19:33 25 doing the killing. But if he aided, abetted, counseled and so

11:19:36 1 on, the language from 1B1.3, if he was involved in a direct
11:19:41 2 way, whether or not he actually killed anyone, he's responsible
11:19:45 3 for his acts in bringing those -- that result about.

11:19:49 4 And there's plenty of circumstantial evidence that he
11:19:52 5 was directly involved. First, as Agent Martin testified to, he
11:19:58 6 and Mr. Waters were friends. They were friends in prison
11:20:03 7 before this happened. They were friends while this happened.
11:20:06 8 He was living with Mr. Waters during this period of time. They
11:20:10 9 remained friends and associated after this ended.

11:20:13 10 The trial transcript shows Ron Waters, David's
11:20:16 11 brother, describing in 1999 that David Waters was hanging out
11:20:20 12 with Gary Karr at their house. They had an ongoing
11:20:23 13 relationship of trust. It wasn't just "they kind of know each
11:20:27 14 other."

11:20:28 15 They also both have extremely violent criminal
11:20:32 16 histories. If you look at Mr. Karr's criminal history, it is
11:20:39 17 almost -- you couldn't think of a better person, if you're
11:20:43 18 David Waters, to help you with this scheme. In 1966 he's
11:20:47 19 convicted of raping a 14-year-old girl. He's discharged from
11:20:54 20 prison in 1969.

11:20:56 21 Less than two years later, he has committed a string
11:20:59 22 of three robberies, the first of which was a robbery where he
11:21:04 23 bound and restrained a victim with an associate. The second
11:21:08 24 one, again, he and an associate enter a drugstore, they
11:21:15 25 restrain someone, they steal their money and drugs. In October

11:21:18 1 of 1971, the same thing. He enters a drugstore. This time
11:21:22 2 he's got a gun. He restrains the victim and takes money and
11:21:27 3 drugs. He gets two years on that charge. He's released from
11:21:33 4 that charge in 1973. That -- May of 1973.

11:21:38 5 By July of 1974, he's committed an armed robbery. He
11:21:46 6 is brandishing a shotgun with an accomplice. He steals over
11:21:51 7 \$30,000 worth of jewelry and flees.

11:21:54 8 In 1974, in September, he and another individual rob
11:22:04 9 and, an allegation, raped a person at gunpoint. And then
11:22:09 10 there's an aggravated kidnapping related to the same conduct.
11:22:17 11 Ultimately, Mr. Karr gets 30 to 50 years of imprisonment for
11:22:21 12 that conduct. He's released from custody in April of 1995, and
11:22:26 13 by August 1995 he's involved in this scheme.

11:22:30 14 If you're David Waters, you can't think of -- you
11:22:34 15 couldn't pick a better person to help you commit these crimes.
11:22:37 16 He's got all of the experience in the world that you want. And
11:22:41 17 that position of trust that he had -- that David Waters had in
11:22:46 18 Mr. Karr is reflected in his involvement in this case. It's
11:22:50 19 Mr. Karr who rents all the vans: the first van to take the
11:22:54 20 O'Hairs from the Atheist Headquarters, ultimately down to the
11:23:00 21 Warren Inn; the second van after they have been killed to take
11:23:04 22 their bodies to the Public Storage unit; the third van to take
11:23:08 23 their cut up bodies and the remains of Danny Fry down to Camp
11:23:12 24 Wood, Texas.

11:23:13 25 Without Gary Karr, none of those things can be done.

11:23:17 1 Perhaps even more telling is that David Waters
11:23:21 2 trusted Gary Karr to go to New Jersey by himself with
11:23:25 3 Jon Murray at a time when Jon Murray is going to get \$600,000
11:23:30 4 out of a bank. There is nothing stopping Gary Karr from making
11:23:35 5 Jon Murray give him \$600,000 and walking away.

11:23:39 6 David Waters trusted Gary Karr to do that because he
11:23:47 7 knew, like we know, that Gary Karr was going to be in very
11:23:50 8 serious trouble if he ever got caught. His criminal history
11:23:54 9 was the same as David Waters'. If they ever get caught as a
11:23:58 10 result of this scheme, they're both going away forever. So he
11:24:01 11 trusted him to do what was right by the scheme, and that's
11:24:04 12 actually what Mr. Karr did.

11:24:07 13 If we're going to talk about the value of Mr. Waters'
11:24:11 14 statement versus the value of Mr. Karr's statement, well, let's
11:24:14 15 take a look at Mr. Karr's statement to police and how it is
11:24:20 16 demonstratively false in a number of particulars.

11:24:22 17 First of all, or simply unbelievable, he claims that
11:24:26 18 in late September or early October, David Waters comes to him
11:24:32 19 and says, I need you to rent a van for me, and I'll pay you
11:24:36 20 70 grand to help me out with something that Mr. Karr understood
11:24:39 21 to be illegal. And Mr. Karr said, Oh, I'm not doing that. But
11:24:43 22 what he didn't say was, Oh, and you can't use this van either.

11:24:47 23 Apparently, Mr. Karr said: You want to pay me
11:24:50 24 70 grand to do something illegal with a van I've rented, knock
11:24:54 25 yourself out. Simply unbelievable if he's not involved in the

11:24:58 1 scheme, which he clearly was. And this is the van, by the way,
11:25:02 2 the third van, which was used to transport the already cut up
11:25:05 3 bodies of the O'Hairs to Camp Wood, Texas.

11:25:11 4 Mr. Karr also made claims that he did a lot of things
11:25:13 5 because he was afraid of David Waters. Anything that he did
11:25:16 6 that was suspect or bad was because he was afraid of
11:25:19 7 David Waters. But anytime David Waters told him to do
11:25:24 8 something illegal, he wasn't afraid enough to say no,
11:25:27 9 apparently. So he was afraid when it was convenient for him,
11:25:28 10 and he wasn't afraid when it was convenient for him as well.

11:25:31 11 Mr. Karr says in his statement he saw Danny Fry on
11:25:34 12 October 2nd. Well, we know Danny Fry was dead by October 2nd.
11:25:43 13 In fact, in his statement he said: I remember it was October
11:25:44 14 2nd because it's the day I rented that last van.

11:25:47 15 Well, we know from Patti Jo Steffens, from
11:25:50 16 Danny Fry's family, and from David Waters' statement, Danny Fry
11:25:57 17 was never seen again after September 30th. He wasn't heard
11:26:02 18 from again. He was never seen again. He was gone. And
11:26:05 19 Patti Jo Steffens described, when the three men came back from
11:26:09 20 cutting up the O'Hairs' bodies, that Danny Fry looked
11:26:13 21 horror-stricken, he looked sick, and David Waters and Gary Karr
11:26:18 22 were buddies with each other, they were laughing with each
11:26:21 23 other, but they were hateful towards Danny Fry.

11:26:27 24 At some point Patti Jo Steffens packs up Danny Fry's
11:26:33 25 belongings because, if you'll recall, Danny Fry was going to go

11:26:35 1 home for his daughter's 16th birthday. And he asked
11:26:38 2 Patti Jo Steffens, Will you pack some of my belongings so I can
11:26:41 3 go back? And she said, Yes, I will. She did that. She left
11:26:45 4 while all three men were still at the house. When she returns,
11:26:49 5 they're all gone, and Danny Fry's items had been unpacked or
11:26:52 6 thrown away.

11:26:53 7 When they returned -- the next time she see
11:26:56 8 Mr. Waters and Mr. Karr together, they're laughing.
11:27:01 9 David Waters is making -- or excuse me. Mr. Karr is making fun
11:27:05 10 of David Waters for not being able to read a map. And they
11:27:10 11 claim that Danny Fry has gone off with some guy, just
11:27:13 12 disappeared. In contrast to his statement to the police, which
11:27:14 13 was: I saw him on October 2nd. Completely inconsistent with
11:27:18 14 all the other evidence in this case.

11:27:22 15 We didn't mention it too much in Mr. Martin's
11:27:24 16 testimony, but it's in the record and it's in the sentencing
11:27:28 17 memorandum. Danny Fry knows that there's a chance that
11:27:33 18 David Waters is going to kill him. So he sends a letter to his
11:27:36 19 brother Bob in Florida and says: If I wind up dead,
11:27:40 20 David Waters did it. And, by the way, I was involved in a
11:27:44 21 scheme I shouldn't have been involved in. I regret it. But if
11:27:47 22 you find -- if you look at David Waters' criminal history,
11:27:51 23 you'll have no trouble linking him to this offense.

11:27:54 24 Well, sometime after the events -- after the O'Hairs
11:27:57 25 are murdered and buried, Gary Karr goes with David Waters to

11:28:01 1 Bob Fry's house, and Bob Fry testifies they threatened him for
11:28:05 2 between a half hour and an hour an half about that letter:
11:28:09 3 Where is it. Give it to us. We need it. We work for some big
11:28:14 4 people who will cause real problems if you don't give us that
11:28:17 5 letter.

11:28:18 6 David Waters -- so Mr. Karr in his statement said
11:28:22 7 David Waters went there with a gun and was going to kill
11:28:26 8 Bob Fry, but I told him to stop, and so we left. Again, he is
11:28:31 9 so terrified of David Waters that he'll go with him to Florida
11:28:34 10 to threaten some guy, but when it comes right down to it, he's
11:28:37 11 not so afraid of a man with a gun he is supposedly afraid of to
11:28:42 12 say, You can't do this. We're leaving now. Completely
11:28:45 13 unbelievable.

11:28:50 14 He also claims he went with David Waters to the
11:28:54 15 burial site at one time at night. You recall Mr. Martin's
11:28:58 16 testimony. That is a dark, rural place with not much
11:29:02 17 artificial light. According to Mr. Karr's own statement, they
11:29:05 18 went there at night one time. He never got out of the car. He
11:29:10 19 has never -- he didn't get out of the car. He didn't do
11:29:13 20 anything with the grave. He never went near the grave.
11:29:17 21 David Waters did something, returned to the car, and they left.

11:29:23 22 Nevertheless, using information from Mr. Karr, either
11:29:25 23 he drew a map or he narrated a map to an officer that turned
11:29:30 24 out to be within 50 feet of where the bodies were actually
11:29:34 25 located. Is it believable that a man who's been to that

11:29:36 1 location one time in the middle of the night where it was pitch
11:29:39 2 black could remember that and draw an accurate map? I would
11:29:43 3 suggest to the Court the answer is no, unless he had previously
11:29:46 4 been there to help bury the bodies, which is consistent with
11:29:51 5 other evidence in this case I'll mention in a moment.

11:29:53 6 Perhaps most telling -- or there's two more telling
11:29:55 7 pieces. Patti Jo Steffens testified that after these three men
11:30:00 8 returned from cutting up the O'Hairs -- she didn't mention
11:30:03 9 cutting up the O'Hairs, of course. She mentions the timeline
11:30:08 10 that we know to be associated with that fact -- she comes home
11:30:11 11 and sees in the entryway of her apartment a bag full of bloody
11:30:17 12 shoes.

11:30:17 13 And she describes them -- the transcript is hard to
11:30:19 14 parse because it seems like she must have made a hand gesture.
11:30:22 15 But she says it looks like the wearers of those shoes were
11:30:27 16 standing in a puddle of blood when they were wearing them.

11:30:30 17 On cross-examination the defense tried to get Patti
11:30:33 18 Joe Steffens to say: Listen, you remember Gary Karr was a
11:30:36 19 tennis player. He only wore particular, actual tennis shoes --
11:30:41 20 not sneakers, but actual tennis shoes that tennis players wear,
11:30:47 21 right? And she said, Yes, that's right. And they asked, Well,
11:30:48 22 that's not the kind of shoe you saw in that bag, right? And
11:30:50 23 said, Yes. That was the kind of shoe I saw in the bag, the
11:30:52 24 kind of shoe that Gary Karr wore.

11:30:55 25 How else does blood get on a shoe of a type that

11:30:58 1 Gary Karr wears if he's not involved? Possibly it's someone
11:31:03 2 else's shoe. That's an inference you could draw if you want
11:31:07 3 to. The more natural inference I would suggest to the Court is
11:31:10 4 he was there cutting up the bodies, consistent with and
11:31:14 5 corroborating what David Waters said.

11:31:16 6 Finally, on just the issue of circumstantial evidence
11:31:18 7 that was admitted at trial, was Mr. Karr's statement, again,
11:31:23 8 saying: Look, David Waters told me what to do. I did whatever
11:31:29 9 he said without question. You know, if you're looking for
11:31:32 10 someone to blame, blame him, was essentially his statement --
11:31:36 11 completely self-serving.

11:31:37 12 And he said: I never told the police anything about
11:31:41 13 this because I went to a lawyer, and that lawyer told me I have
11:31:44 14 criminal liability. Don't say a word to anyone. Well, that
11:31:49 15 lawyer testified at trial. And, when asked -- well, excuse me.
11:31:53 16 A proffer of his testimony was given at trial. He wasn't
11:31:57 17 allowed to testify about much. But he proffered: Yes, I spoke
11:32:01 18 to Gary Karr on two occasions on two different days and I never
11:32:04 19 told him based on our conversation that he had any criminal
11:32:07 20 liability.

11:32:08 21 So, clearly, Mr. Karr had different reason for not
11:32:15 22 telling the police what had happened. And the reason is not
11:32:17 23 difficult to discern: He had more involvement than he claimed.

11:32:20 24 Reading his statement as a whole, it is completely
11:32:25 25 unbelievable that a man who claims he was very concerned about

11:32:29 1 going back to prison told David Waters I'll help you with this
11:32:33 2 scheme, but only if I don't do anything illegal, he asked zero
11:32:36 3 questions at any time during this entire scheme, and he just
11:32:42 4 completely did what David Waters said. According to Mr. Karr's
11:32:45 5 own statement, he went to New Jersey with Jon Murray to act as
11:32:48 6 security, didn't know where Jon Murray went, didn't know what
11:32:52 7 Jon Murray was doing, had no idea that Jon Murray got any kind
11:32:56 8 of money. If you believe that he was acting as security, you
11:32:59 9 have to question why he did zero things consistent with acting
11:33:03 10 as security.

11:33:05 11 So that is evidence from the trial transcript that
11:33:09 12 has nothing to do with David Waters or any of the other folks
11:33:13 13 who testified.

11:33:18 14 Some folks who did testify at trial, in addition to
11:33:22 15 that evidence, that puts Mr. Karr directly involved was
11:33:28 16 Jason Cross and Aaron Morris. These are folks that he was
11:33:31 17 incarcerated with prior to his trial and during -- well, prior
11:33:37 18 to his trial. And they both put him directly involved in the
11:33:41 19 killing of Danny and the dismemberment and burying of the
11:33:46 20 O'Hairs.

11:33:47 21 According to these folks, Karr told them -- Mr. Karr
11:33:50 22 told them: I killed Danny Fry, or I was -- me and Waters
11:33:54 23 killed Danny Fry. I helped cut up the O'Hairs, and we buried
11:34:00 24 them. That's direct -- direct evidence of Karr's own
11:34:03 25 statements. Again, the defense tried to call into question

11:34:06 1 their credibility. That's a question for this Court. But that
11:34:08 2 is direct evidence of Mr. Karr's own statements of his
11:34:12 3 involvement.

11:34:16 4 Then there are folks who -- that's all, again, just
11:34:19 5 during the trial. Speaking of evidence about after the trial,
11:34:24 6 we've got Inmate 1 and Inmate 2, who are both folks who are
11:34:32 7 incarcerated with Mr. Karr in the Bureau of Prisons. The
11:34:34 8 statements given by Inmate 1 and Inmate 2, they vary and
11:34:37 9 they're inconsistent with each other. There's no question
11:34:39 10 about that. Although one of the inmates made a point to say
11:34:43 11 that Mr. Karr's statements were inconsistent and generally
11:34:48 12 self-serving.

11:34:48 13 Through various ways, Inmate 2 said more, but,
11:34:54 14 essentially, both of them indicate that Karr told them he
11:34:57 15 killed the O'Hairs. Either he did it by himself or he did it
11:35:01 16 with David Waters or Danny Fry. Again, it varied. But those
11:35:06 17 are statements purportedly by Mr. Karr to those inmates with
11:35:10 18 his direct involvement in their murder.

11:35:10 19 Finally, there's David Waters' statement. You've
11:35:13 20 heard enough about it. You don't need to hear any more about
11:35:15 21 it. But the only thing I'll point out is, if we're going to
11:35:20 22 weigh statements, Mr. Karr's statement is far more unbelievable
11:35:24 23 than Mr. Waters' statement.

11:35:26 24 Mr. Karr claims he told -- he claims -- this is in
11:35:31 25 the trial testimony and in his own statement. He probably told

11:35:34 1 five different people five different reasons why he was coming
11:35:37 2 to Texas, how much he expected to get paid, when he would be
11:35:40 3 coming back. He told his employer two different stories. When
11:35:44 4 his employer confronted him about the first one, his own
11:35:48 5 statements are completely inconsistent with themselves, first
11:35:52 6 of all, they're inconsistent with the other evidence. For
11:35:54 7 instance, as we point out in our sentencing memo -- and the
11:35:57 8 defense suggests we're trying to poke holes in their theory.
11:36:00 9 We're not trying to poke holes in their theory. They don't
11:36:03 10 have to have a theory at all. We know their theory is false.
11:36:06 11 Their theory at trial was the O'Hairs are still alive. One of
11:36:10 12 the witnesses they called claimed to have seen them in Bulgaria
11:36:11 13 or Romania or something. We know that's false. What I'm
11:36:15 14 pointing out is Mr. Karr's statements are completely at odds
11:36:18 15 with the evidence.

11:36:20 16 The fact that Mr. Karr's story is I got involved
11:36:24 17 because the O'Hairs had to flee the country from the IRS. We
11:36:28 18 know for a fact that's not true. They were on the verge of
11:36:31 19 settling all of their outstanding liabilities with the IRS for
11:36:35 20 just over \$100,000. And, as you'll recall, the O'Hairs left
11:36:40 21 \$100,000 -- they didn't claim \$100,000 in gold coins. There's
11:36:45 22 no reason for them to leave the country for an IRS debt based
11:36:50 23 on money that they left behind anyway.

11:36:56 24 There's plenty of other inconsistencies in
11:36:59 25 Gary Karr's story. He claims he didn't know about the gold.

11:37:02 1 Patti Jo Steffens testified they had a conversation about the
11:37:06 2 gold right in front of her. There's plenty of other reasons to
11:37:08 3 doubt Mr. Karr's statement.

11:37:10 4 But all that taken together, the circumstantial
11:37:14 5 evidence at trial, Mr. Karr's unbelievable statement, the
11:37:18 6 testimony of the other people involved, Patti Jo Steffens
11:37:20 7 seeing bloody tennis shoes, it all says -- it all points to
11:37:25 8 Mr. Karr having direct involvement in their murder. I'm going
11:37:30 9 on far more than I should, but that's theory of liability one,
11:37:33 10 where he's directly involved.

11:37:35 11 Theory of liability two is that it was reasonably
11:37:37 12 foreseeable to him even though someone else did it. And I
11:37:41 13 won't go on -- that's under one 1B1.3(a)(1)(B). The only
11:37:48 14 points I'll make about that are: We've cited in our sentencing
11:37:53 15 memorandum robbery, extortion, kidnapping, they are all crimes
11:37:57 16 that, by their nature, involve the risk of violence and in some
11:38:01 17 cases murder. And those cases are cited in there.

11:38:05 18 Every case has to be based on its facts, of course.
11:38:08 19 But if you look at the facts of Mr. Karr's own prior robberies
11:38:15 20 and kidnappings, they involve the use of weapons, they involve
11:38:18 21 sexual assault, they involve allegations of violence. There is
11:38:21 22 nothing about these crimes that would be surprising or
11:38:24 23 unfamiliar to Mr. Karr.

11:38:27 24 And, finally, the most compelling reason why it is
11:38:31 25 reasonably foreseeable to Mr. Karr that the O'Hairs are going

11:38:35 1 to be murdered and that Danny Fry is going to be murdered is
11:38:38 2 because that is the only way he could ever hope to stay out of
11:38:41 3 prison.

11:38:43 4 At some point along the way, whether it was from the
11:38:46 5 beginning or sometime later, they decided to take money from
11:38:50 6 the O'Hairs by force, threat of force, and against their will.
11:38:55 7 That's established by the jury's verdict beyond a reasonable
11:38:58 8 doubt. And so Mr. Karr knows: I've been down many times. I
11:39:06 9 just got out of prison for a fifteen-year term or whatever it
11:39:09 10 was. If I get convicted again, I am going away forever, which
11:39:15 11 turned out be correct under the law at the time.

11:39:17 12 David Waters knows the same thing. And so when you
11:39:20 13 look at the links between David Waters and Gary Karr and the
11:39:24 14 abduction of the O'Hairs, there's no way he can let them go.
11:39:29 15 He rented the vans in his own name. The hotel is rented in his
11:39:33 16 name. If the O'Hairs are let go, the first thing they're going
11:39:36 17 to say is "David Waters kidnapped me with some guy I don't
11:39:40 18 know." And they're going to look at the records for the hotel,
11:39:42 19 and they're going to find Gary Karr's name.

11:39:44 20 "Oh, they took us around in some vans." They're
11:39:47 21 going the find the van rental records and find Gary Karr's
11:39:52 22 name.

11:39:53 23 "Oh, well, Danny Fry made a bunch of phone calls from
11:39:54 24 the Warren Inn." Well, suddenly Danny Fry is involved. When
11:39:58 25 Mr. Karr rented the first van, he gave David Waters' phone

11:40:02 1 number.

11:40:03 2 There's a million links between Gary Karr and
11:40:06 3 Danny Waters and this crime. And if he lets the O'Hairs go,
11:40:09 4 he's going to prison. And so whether or not Mr. Karr -- maybe
11:40:13 5 Mr. Karr, out of the milk of human kindness, says I don't care.
11:40:17 6 I'm willing to take that risk. But it's still reasonably
11:40:19 7 foreseeable to him that David Waters won't take that risk.

11:40:23 8 And so whether or not he was involved or just turned
11:40:25 9 a blind eye while David Waters did something is irrelevant
11:40:30 10 under the guidelines. He is still legally culpable for this
11:40:34 11 crime. And, Judge, we ask you to listen to Judge Sparks and
11:40:38 12 his statement during the first sentencing where he said: "If
11:40:39 13 ever there was a life case, this one qualifies."

11:40:42 14 We ask that you impose a sentence of 595 months,
11:40:45 15 Judge, and that's all I've got to say, thankfully.

11:40:48 16 THE COURT: At this time take we're going to take a
11:40:49 17 noon break. I have something I need to get to over the noon
11:40:52 18 hour. And then we'll come back and finish this up this
11:40:56 19 afternoon. Court will be in recess until two o'clock.

11:40:59 20 (Recess)

13:23:57 21 (Open court)

13:23:57 22 THE COURT: Before you finish the argument on the
14:04:40 23 objections, are you finished with your total argument? I'm
14:04:43 24 still just interested in the objections. So, Ms. Williams,
14:04:47 25 Mr. Aldredge, if you want to say anything more on the

14:04:52 1 objections, I will entertain you now.

14:05:03 2 MR. ALDREDGE: Yes, Your Honor. Thank you.

14:05:05 3 So there are just a couple of factual corrections I
14:05:09 4 wanted to make on Mr. Harding's summary. First of all, the
14:05:15 5 trial testimony was that David Waters threatened Bob Fry,
14:05:22 6 Danny Fry's brother, in Florida. The testimony was that, from
14:05:33 7 some source, that Mr. Karr was there. However, the testimony
14:05:35 8 was also that Bob Fry never actually laid eyes on Mr. Karr. So
14:05:41 9 it wasn't confirmed by Mr. Fry.

14:05:46 10 Secondly, I wanted to remind that Mr. Harding made a
14:05:50 11 statement that -- that Mr. Waters and Mr. Karr had similar
14:05:56 12 criminal histories. I think that is a misstatement.
14:05:59 13 Mr. Waters is a convicted -- was a convicted and admitted
14:06:05 14 murderer. One conviction, five admissions, and two suspected
14:06:11 15 murders that he was involved with. Mr. Karr doesn't have
14:06:15 16 homicide of any kind in his background.

14:06:18 17 Also, one other factual correction about the criminal
14:06:22 18 history is that Mr. Harding indicated that Mr. Karr has a
14:06:28 19 conviction for rape. In fact, he does not. There's a 19 --
14:06:34 20 1966 -- in paragraph 67 of the PSR a 1966 conviction for
14:06:41 21 indecent liberties with a child.

14:06:43 22 So with those factual corrections, Your Honor, what
14:06:48 23 you heard essentially was closing argument. And we're here
14:06:51 24 because the government doesn't like the jury verdict, and
14:06:54 25 that's ultimately what this boils down to. The government

14:06:58 1 wants you to now at resentencing ignore the jury's verdict.

14:07:03 2 The verdict that came after a mountain of the most
14:07:09 3 lurid and violent kind of evidence: bloody shoes, supposed
14:07:15 4 confessions to jailhouse witnesses, and on and on and on. But
14:07:19 5 the jury rejected it. There's nothing new that the government
14:07:25 6 has presented in support of the cross-reference, at least
14:07:29 7 nothing that you should rely on, no live witnesses, none
14:07:31 8 subject to observation and cross-examination. There's no
14:07:35 9 reason that these supposed new jailhouse witnesses couldn't
14:07:39 10 have been brought here. No sworn testimony, nothing, again,
14:07:42 11 that should change anything about the balance of the evidence.

14:07:46 12 The government held all the cards in this case and
14:07:49 13 got to choose who to try, when to try them, and what order to
14:07:52 14 try them in. And they shouldn't get another bite at the apple.
14:07:57 15 They want to say that the jury's verdict didn't make sense.

14:07:59 16 And, you know, just as a matter of pointing out and
14:08:04 17 not to go down the rabbit hole of rearguing the whole case and
14:08:08 18 what the evidence was at trial, but just to give you five quick
14:08:12 19 examples of why the jury's verdict made sense:

14:08:19 20 First of all, Jon Murray has opportunities to get
14:08:21 21 the -- to make an outcry, to get the authorities involved at
14:08:25 22 any number of airports and banks, including in New Jersey and
14:08:30 23 in San Antonio at the Frost Bank with an armed San Antonio
14:08:34 24 police officer there, unrealistic.

14:08:37 25 Three people flailing in a hotel room surrounded on

14:08:42 1 top and on the sides by other hotel rooms, pounding the wall,
14:08:48 2 yelling as they're apparently slowly murdered, unrealistic.

14:08:53 3 No DNA found in a storage unit where three people
14:08:58 4 were apparently cut up into little bits, allegedly. No
14:09:04 5 complaints or blood or bleach pouring into other neighboring
14:09:11 6 storage units, again, no DNA found, unrealistic.

14:09:15 7 Bodies in shoddy barrels that apparently were not
14:09:18 8 sealed well and were described as sort of decrepit barrels for
14:09:23 9 five to six days not generating an overwhelming stench to
14:09:28 10 arouse a complaint or the suspicion of anyone around there,
14:09:33 11 unrealistic.

14:09:34 12 Finally, Your Honor, Danny Fry, according to
14:09:37 13 David Waters, was killed at a site in Dallas. That is not only
14:09:42 14 unrealistic, it an outright lie.

14:09:46 15 The government had -- they seem to have forgotten
14:09:51 16 that they asked and were granted a Pinkerton instruction in
14:09:55 17 count three. A Pinkerton criminal liability, as the Court well
14:10:00 18 knows, is by far the broadest form of criminal liability that
14:10:04 19 there is. It is far broader than 1B1.3 of the guidelines. It
14:10:11 20 is the prosecutor's darling. And they seem to have forgotten
14:10:17 21 that. The jury was instructed on that. The jury had every
14:10:20 22 opportunity under any kind of theory to hold Mr. Karr liable
14:10:23 23 for the deaths of the O'Hairs, but they rejected that.

14:10:28 24 And, Your Honor, the rest of what I have has to do
14:10:38 25 with sentencing. But that's our position. The government

14:10:43 1 hasn't given you any reason to ignore the jury's verdict. We'd
14:10:48 2 ask that the Court grant our objection and deny the
14:10:50 3 cross-reference to the murder guideline.

14:10:51 4 THE COURT: Well, in spite of the fact that we've
14:10:54 5 wandered around a little bit, I'm coming back to the
14:10:57 6 objections, and that's all I'm ruling on right now, are the
14:10:59 7 objections, and then we'll get into the rest of what we have
14:11:02 8 here.

14:11:02 9 Initially, the objection regarding the constitutional
14:11:10 10 objection is overruled or is denied because *Watts* does control
14:11:18 11 in this case, and we are not at the point yet to where, even
14:11:24 12 though there appears to be movement and concern in Congress
14:11:29 13 about acquitted conduct being considered by the court, that is
14:11:34 14 not yet the law. And I gave up a long time ago trying to
14:11:41 15 predict whatever the Supreme Court will do or whatever the
14:11:44 16 Congress of the United States would do at any given moment. If
14:11:50 17 they change the law, then we might all be back here again at
14:11:54 18 some point. But I overrule the constitutional objections based
14:11:59 19 primarily on *Watts*.

14:12:01 20 With regard to the other objection involving the
14:12:05 21 cross-reference to section B3.1(c)(1), I think it is important
14:12:14 22 and it's been argued to read exactly what it says. 1.B1.3(a)
14:12:23 23 reads: "Chapters Two (offense conduct)" -- and I'm reading
14:12:28 24 from the more current guidelines manual, but it has not changed
14:12:33 25 in any appreciable respect from the guidelines manual that was

14:12:36 1 in effect at the time of sentencing.

14:12:39 2 "Unless otherwise specified, the base level where the
14:12:44 3 guideline specifies more than one base level offense, specific
14:12:49 4 offense characteristics and cross-references in chapter two,
14:12:53 5 and adjustments in chapter three shall be determined on the
14:12:56 6 basis of the following:

14:12:58 7 All acts and omissions committed, aided, abetted,
14:13:02 8 counseled, commanded, induced, procured, or willfully caused by
14:13:07 9 the defendant; and

14:13:07 10 in the case of a jointly undertaken criminal activity
14:13:11 11 (a criminal plan, scheme, endeavor, or enterprise undertaken by
14:13:15 12 the defendant in concert with others, whether or not charged as
14:13:20 13 a conspiracy), all acts and omissions of others that were --

14:13:23 14 within the scope of the jointly undertaken criminal
14:13:26 15 activity, in furtherance of that criminal activity, and
14:13:32 16 reasonably foreseeable in connection with that criminal
14:13:34 17 activity;

14:13:35 18 that occurred during the commission of the offense of
14:13:38 19 conviction, in preparation for that offense, or in the course
14:13:42 20 of attempting to avoid detection or responsibility for that
14:13:46 21 offense."

14:13:47 22 I find that the probation department has correctly
14:13:53 23 included that as part of the base level offense. I find, based
14:13:58 24 on the evidence that I have heard here today and on what is
14:14:03 25 contained in the presentence investigation report, and if I

14:14:12 1 were not to consider any of the post-trial or post-first
14:14:17 2 sentencing information, that that is satisfied and has been
14:14:23 3 satisfied.

14:14:25 4 I find that just what was known then is enough to
14:14:31 5 bring Mr. Karr within that provision of the guidelines.
14:14:40 6 Standing alone, it is the Court's opinion that accompanying or
14:14:49 7 going with Jon Garth Murray to New Jersey to deal with the wire
14:14:54 8 transfer clearly puts him involved with the others.

14:15:02 9 I think the passage of time is important here, as the
14:15:10 10 evidence has reflected. Again, pre-the new evidence -- this
14:15:20 11 all occurred between August and October of 1995 -- I think, at
14:15:24 12 a minimum, the longer this went on with Mr. Karr and the
14:15:35 13 others, Mr. Waters in particular, dealing with the O'Hairs -- I
14:15:45 14 refer to all three of them as "the O'Hairs" -- keeping them
14:15:49 15 hostage while they took various types of money made it
14:15:56 16 reasonably foreseeable to anyone involved in this enterprise
14:15:59 17 that the longer it went on, the more likely it was that
14:16:03 18 somebody was going to get killed, and probably all of them
14:16:07 19 would be murdered in this, because they just knew too much
14:16:11 20 about it and had seen too much.

14:16:13 21 So, just on the evidence that was previously known,
14:16:23 22 which begins on page 5 of the presentence investigation report,
14:16:24 23 there is more than enough here in my opinion to justify the
14:16:29 24 cross-reference.

14:16:30 25 Plus -- and we will talk more about Mr. Waters'

14:16:37 1 statement I'm sure later -- the statement that Agent Martin
14:16:42 2 took from Mr. Waters after the original sentencing in this case
14:16:53 3 I find to be, for want of a better word, an intervening cause
14:16:56 4 here or intervening information. That is in information that
14:17:02 5 the jury did not have that the Court now has.

14:17:04 6 So everything the defendant argues about the jury
14:17:11 7 didn't get to evaluate that statement, there was no
14:17:13 8 cross-examination on the basis of the statement, that is all
14:17:16 9 true, but also cuts another way. And it mitigates against my
14:17:29 10 thinking that the government is just unhappy with the jury
14:17:31 11 verdict that I presume the defendant refers to as the acquittal
14:17:36 12 on count one. This is additional information. I am charged
14:17:47 13 with considering that information that has been argued here,
14:17:52 14 and I do consider that information that came from Mr. Waters.

14:18:01 15 MR. ALDREDGE: Your Honor, if I may? I'm sorry. I
14:18:03 16 thought I heard this earlier, but this is the second time the
14:18:05 17 Court has mentioned only an acquittal on count one. There was
14:18:09 18 also an acquittal on the death resulting in count three.

14:18:13 19 THE COURT: All right. I take that into account. I
14:18:19 20 misspoke. I should have mentioned both of those. But that
14:18:26 21 does not affect my reasoning that I have information in front
14:18:28 22 of me on those deaths that the jury did not have. And I
14:18:34 23 consider that, and we will talk about that further, I feel
14:18:40 24 certain, later when we have argument on the sentence that this
14:18:45 25 Court should impose as a whole.

14:18:52 1 But I take seriously my charge, and I realize that it
14:18:56 2 is not the favorite thing of lawyers in this case. It is
14:19:04 3 pretty wide open on what I can consider at sentencing. I
14:19:09 4 obviously have a lesser standard that I follow -- it's
14:19:20 5 preponderance of the evidence -- in determining what I can do
14:19:22 6 at sentencing. And I do take into account the later statement
14:19:27 7 of Waters.

14:19:28 8 And so that even then added what we had before.
14:19:40 9 Mr. Waters' statement clearly satisfies the cross-reference
14:19:45 10 provision of 2B3.1. So the objection -- that objection is
14:19:56 11 likewise overruled.

14:19:57 12 Those rulings having been made, the Court finds that
14:20:02 13 the probation department has gotten it right in their
14:20:09 14 computations -- in the department's computation. I've
14:20:14 15 overruled all of the objections, and I find the correct total
14:20:16 16 offense level in this case is 43, the correct criminal history
14:20:21 17 category is five, and the correct guideline provision would be
14:20:26 18 a term of incarceration of 480 months.

14:20:37 19 That ruling having been said and that ruling having
14:20:39 20 been made, Mr. Aldredge, Ms. Williams, do you know of any legal
14:20:43 21 reason why the Court should not proceed with sentencing at this
14:20:46 22 time?

14:20:46 23 MR. ALDREDGE: No, Your Honor.

14:20:47 24 THE COURT: Mr. Harding, does the government know of
14:20:49 25 any legal reason why the Court should not proceed with

14:20:52 1 sentencing at this time?

14:20:53 2 MR. HARDING: No, Your Honor.

14:20:55 3 THE COURT: All right. Before I hear from you-all
14:20:58 4 further, I would like Agent Martin to come forward and retake
14:21:02 5 the stand, please. I have a couple of questions that I want to
14:21:08 6 ask him before we get into the rest of the argument.

14:21:18 7 (Agent Martin takes the stand)

14:21:18 8 THE COURT: Agent Martin, you'll recall you're still
14:21:20 9 around oath.

14:21:20 10 THE WITNESS: Yes, sir.

14:21:21 11 THE COURT: Now, what I wanted to ask you is I think
14:21:23 12 your testimony was that you spent the better part of two days
14:21:27 13 taking the statement from Mr. Waters; is that correct?

14:21:31 14 THE WITNESS: Yes, sir.

14:21:32 15 THE COURT: And you had opportunity, I presume,
14:21:36 16 during that entire time to observe him and watch him and look
14:21:40 17 at him and make some evaluation of his credibility; is that
14:21:43 18 correct?

14:21:44 19 THE WITNESS: Yes, sir.

14:21:44 20 THE COURT: And, up to that point in time, how long
14:21:50 21 had you been a criminal investigator for the Internal Revenue
14:21:56 22 Service?

14:21:57 23 THE WITNESS: Probably 23 years.

14:21:59 24 THE COURT: Had you had occasion to interview people
14:22:03 25 throughout that 23 years?

14:22:04 1 THE WITNESS: Yes, sir.

14:22:05 2 THE COURT: All right. Based on your personal
14:22:07 3 observations of Mr. Waters, and you indicated that he did
14:22:15 4 contradict himself from time to time, what was your feeling as
14:22:21 5 to his demeanor and his truthfulness? How did he present
14:22:25 6 himself. What was your reaction to him?

14:22:27 7 THE WITNESS: For the most part, I think what he was
14:22:33 8 trying to do was give us information. As far as -- I think it
14:22:37 9 was more like he was corroborating what I already knew. There
14:22:41 10 were some things that we were going to go back over,
14:22:45 11 specifically, things that I thought he was contradicting
14:22:49 12 himself in. But we never got that opportunity.

14:22:53 13 THE COURT: As to the general parameters of what he
14:22:57 14 said he observed with regard to the holding of -- as I said,
14:23:05 15 I'll refer to all of them as "the O'Hairs" -- the O'Hairs and
14:23:09 16 their murders, did you find him credible?

14:23:12 17 THE WITNESS: Yes, sir, I did.

14:23:13 18 THE COURT: All right. I have no further questions,
14:23:14 19 but I will allow the lawyers to ask questions of this witness
14:23:19 20 now that I have interjected myself into this.

14:23:21 21 Ms. Williams, you may begin.

14:23:24 22 MS. WILLIAMS: Agent Martin, in your 23 years of
14:23:26 23 investigation up to that time, had you ever had the opportunity
14:23:29 24 to interview anyone about anything other than money?

14:23:35 25 THE WITNESS: Mainly money.

14:23:36 1 MS. WILLIAMS: That's all the questions I have,
14:23:38 2 Judge.

14:23:38 3 THE COURT: Mr. Harding?

14:23:39 4 MR. HARDING: No, Your Honor.

14:23:40 5 THE COURT: All right. You may step down. Thank
14:23:43 6 you, Agent Martin.

14:23:44 7 Mr. Karr, Ms. Williams, Mr. Aldredge, if any of you
14:23:55 8 have anything you would like to say to the Court before the
14:23:58 9 Court pronounces sentence, I will hear from you at this time
14:24:02 10 and I will take whatever you have to say into account in
14:24:04 11 determining the appropriate sentence to impose in this case.

14:24:13 12 MR. ALDREDGE: Your Honor, we're asking that the
14:24:15 13 Court consider a variance below the 480-month guideline range.
14:24:20 14 You know, Mr. Harding said that at time of the original
14:24:27 15 sentencing hearing that there was some indication about an
14:24:31 16 upper departure for underrepresented criminal history. At that
14:24:35 17 time it didn't score because it was 20-plus years old. Well,
14:24:39 18 now that criminal history is 40-plus years old.

14:24:43 19 It is not reflective of who Mr. Karr is. He has
14:24:52 20 had -- I remind the Court that he has had an immaculate,
14:24:56 21 exemplary Bureau of Prisons record. He has a -- he has a
14:25:01 22 plan -- a release plan. He has his daughter that he could go
14:25:06 23 live with. He still has his 98-year-old mother that -- that he
14:25:11 24 hopes to see.

14:25:12 25 And our position is that -- that a sentence of

14:25:17 1 480 months can't be squared without creating -- can't be
14:25:25 2 squared with what Mr. Waters ended up with without creating
14:25:29 3 unwarranted sentencing disparity.

14:25:31 4 Our request is that the Court consider no greater
14:25:33 5 than a 327-month sentence that would run concurrently with
14:25:38 6 counts four and five. Again, other than avoiding unwarranted
14:25:42 7 sentencing disparity, because it would already be significantly
14:25:49 8 greater than what David Waters got, but also it would be an
14:25:53 9 appropriate sentence and would meet the sentencing goals of
14:25:58 10 3553(a) because of his age, because of his health -- he's got
14:26:02 11 hepatitis C, hearing loss, neurodegenerative disease -- and,
14:26:08 12 again, because of his exemplary record in prison and because of
14:26:11 13 the rehabilitation that he has demonstrated.

14:26:14 14 So our request, Your Honor, is that the Court impose
14:26:17 15 no greater than a 327-month sentence in this case.

14:26:26 16 THE COURT: Ms. Williams, anything do you have
14:26:27 17 anything you'd like to say?

14:26:28 18 MS. WILLIAMS: No, Your Honor.

14:26:29 19 THE COURT: Mr. Karr, do you have anything you would
14:26:31 20 personally like to say before sentence is imposed.

14:26:34 21 THE DEFENDANT: No, sir.

14:26:38 22 THE COURT: Mr. Harding, I'll hear from the
14:26:39 23 government at this time.

14:26:40 24 MR. HARDING: Thank you, Your Honor. You've heard
14:26:42 25 plenty from me, so I'll keep it as brief as I can.

14:26:45 1 THE COURT: I've heard that before.

14:26:46 2 MR. HARDING: As brief as I can, Judge. We -- the
14:26:50 3 government believes that there's nothing about this case that
14:26:55 4 would bring it outside the ambit of the guidelines. The
14:26:59 5 O'Hairs were held against their will, we believe, and the Court
14:27:04 6 has found. They were separated from their money by threats of
14:27:10 7 force and actual force. Ultimately, they were murdered by
14:27:13 8 Mr. Karr and his associates.

14:27:17 9 It's hard to imagine a crime that would be more
14:27:19 10 serious than that, even standing alone. But built on a full
14:27:26 11 lifetime of criminal behavior of a similar sort by Mr. Karr, it
14:27:30 12 only aggravates the situation. Nobody is denying that he's
14:27:33 13 older now than he was when he was convicted. Nobody is denying
14:27:36 14 that has health problems.

14:27:38 15 But those things are not enough to overcome not only
14:27:43 16 the danger that Mr. Karr poses. As we pointed out in our
14:27:46 17 sentencing memorandum, it does not require an Olympic athlete
14:27:51 18 to carry a gun. And use of gun is Mr. Karr's M.O., for lack of
14:27:55 19 a better word. Looking back at his criminal history, he
14:27:58 20 carries weapons to get his way. He makes people do what he
14:28:01 21 wants them to do by threatening them with firearms. And
14:28:04 22 there's nothing about his current state that will prevent that.

14:28:07 23 More to the point, Judge, this was just a heinous
14:28:11 24 crime. No matter how old he is, his family can still visit
14:28:20 25 him, they can still write to him, they can still have

14:28:23 1 communication with him, and that is not true of any of the
14:28:25 2 O'Hairs. They were all killed.

14:28:27 3 Bill Murray, who is the son of Madalyn Murray O'Hair,
14:28:30 4 who wanted to write a victim impact statement, he's been too
14:28:34 5 sick to write one. Our victim witness coordinator has been in
14:28:37 6 touch with him. He'll never speak to any of his family again,
14:28:40 7 of Madalyn, Robin, and Jon. So when we're considering who to
14:28:44 8 be sympathetic with here, Judge, I suggest to you it's not
14:28:47 9 Mr. Karr, it's the O'Hairs whose lives he helped end.

14:28:51 10 So we ask for a guideline sentence, Judge.

14:28:56 11 THE COURT: Does probation have anything further
14:28:57 12 before sentence is imposed?

14:28:58 13 PROBATION OFFICER: No, Your Honor.

14:28:59 14 THE COURT: Is there anyone here present in the
14:29:00 15 courtroom, anyone in the audience that would like to say
14:29:02 16 anything about this case before the Court imposes sentence? If
14:29:05 17 so, please come forward.

14:29:06 18 (No response)

14:29:08 19 THE COURT: Seeing none, Mr. Karr, Mr. Aldredge,
14:29:13 20 Ms. Williams, do any or all of you or any combination of you
14:29:16 21 have anything you would like to say either in addition to what
14:29:19 22 you've already said or in response to anything that's been said
14:29:22 23 by anyone else?

14:29:24 24 MS. WILLIAMS: Nothing further, Your Honor.

14:29:25 25 MR. ALDREDGE: Nothing further.

14:29:26 1 THE COURT: Mr. Karr?

14:29:26 2 THE DEFENDANT: No, sir.

14:29:27 3 THE COURT: The Court has read and reviewed the
14:29:30 4 presentence investigation report prepared by the probation
14:29:34 5 department in this case. And after considering the objections
14:29:39 6 that have been made by the defendant and overruling them, I
14:29:43 7 accept and adopt that report, and I find the correct total
14:29:46 8 offense level to be 43, the defendant's correct criminal
14:29:49 9 history category to be five, and the correct guideline sentence
14:29:55 10 to be a term of incarceration of 480 months.

14:30:01 11 In addition, the Court observes there is no plea
14:30:07 12 agreement in this case, that the defendant was tried to a jury,
14:30:10 13 and we have discussed the jury's findings in this case. I have
14:30:19 14 considered carefully the defendant's original sentencing
14:30:21 15 memorandum and the amended sentencing memorandum.

14:30:25 16 I have carefully reviewed and considered the
14:30:27 17 government's sentencing memorandum, including all of the
14:30:32 18 attachments to that memorandum, including the lengthy
14:30:37 19 transcripts and the disc that was included. I have carefully
14:30:42 20 reviewed a letter that I received from the defendant's
14:30:47 21 daughter, and I have reviewed the exhibits that I admitted into
14:30:52 22 evidence today. And I have previously indicated that I had
14:30:57 23 reviewed the attachments to the government's sentencing
14:31:02 24 memorandum, but I have also reviewed and considered all
14:31:05 25 attachments to any memorandum or pleading that we've had in

14:31:16 1 this case. I have further reviewed the original presentence
14:31:19 2 investigation report and the original sentence of the
14:31:21 3 sentencing court.

14:31:23 4 I take all of this into account in determining what I
14:31:27 5 think would be a sentence that is sufficient but not greater
14:31:30 6 than necessary to punish this defendant for the crime as
14:31:36 7 provided in Title 18 United States Code, Section 3553. And I
14:31:44 8 want to make a few observations here, and I'll try not to be
14:31:49 9 redundant.

14:31:49 10 But I repeat what I said about the cross-reference
14:31:54 11 provision that the probation department included. I think that
14:32:00 12 is well taken. As I said before, I have information before me
14:32:07 13 that the jury did not have before it, and so I do not look on
14:32:13 14 this as a situation where the government just doesn't like the
14:32:17 15 jury verdict. I find that the provision, as I said in
14:32:23 16 overruling the objections to the presentence investigation
14:32:30 17 report, the provision in Sentencing Guideline 1B1.3, is well
14:32:39 18 taken and that I take into account all of the relevant conduct
14:32:44 19 here.

14:32:47 20 I think this is just about as serious a crime as I
14:32:51 21 have ever seen in this court. It's certainly, if not the most
14:32:58 22 serious, it's right up there. The government quoted what
14:33:03 23 Judge Sparks said when he did the original sentencing in this
14:33:06 24 case. The severity and the seriousness and the horror of this
14:33:16 25 crime has not changed in the 26 years, more or less, since it

14:33:19 1 was committed and in the 21 years, more or less, since the
14:33:23 2 original sentence was imposed in this case.

14:33:27 3 In trying to determine what I think would be that
14:33:32 4 sentence that is sufficient but not greater than necessary, I
14:33:37 5 have looked very carefully at the nature and circumstances of
14:33:41 6 the offense and considered a sentence that would reflect its
14:33:46 7 seriousness.

14:33:47 8 Coupled with that is the history and characteristics
14:33:52 9 of the defendant, which is well described in the presentence
14:33:55 10 investigation report and which has been described in this
14:34:00 11 courtroom and in the sentencing memoranda that I have reviewed.

14:34:05 12 I'm asked to consider how he has behaved as a
14:34:12 13 prisoner since he has been incarcerated, and I know that I can
14:34:16 14 do that. It always bothers me a little bit, though -- because
14:34:21 15 I'm asked and have been asked to do that in other cases -- it
14:34:25 16 almost, when a defendant is allowed to be resentenced or there
14:34:31 17 is an order to resentence the defendant and I look at his
14:34:38 18 prison history, it comes close to putting this Court in the
14:34:43 19 position of being a parole commission and determining whether
14:34:49 20 or not his actions would justify a lesser sentence, which
14:34:55 21 smacks pretty close of parole, but we don't have parole in the
14:35:01 22 federal system. So that always concerns me a little bit. I've
14:35:05 23 had it argued to me both ways on resentencing here because of
14:35:11 24 the positive record the defendant has had in prison and, in
14:35:15 25 another case that I heard, because of a negative record the

14:35:21 1 defendant has.

14:35:23 2 So, although I look at that, it is not something that
14:35:25 3 I place a whole lot of store in in determining how to apply the
14:35:32 4 factors in Title 18 of the United States Code, Section 3553.
14:35:38 5 And I go back to the fact that the nature of this case, the
14:35:47 6 circumstances of this offense, its seriousness has not changed
14:35:52 7 in the years since the crime was committed.

14:36:00 8 Possibly there is not as great a need to protect the
14:36:07 9 public from further crimes by this defendant as there was in
14:36:11 10 2000, but I find that pretty much is a factor of the passage of
14:36:17 11 time between then and now. I think I still must place great
14:36:26 12 store in a sentence that would afford adequate deterrence to
14:36:30 13 criminal conduct. And the way that is worded in Section 3553
14:36:36 14 is it doesn't say adequate deterrence to criminal conduct by
14:36:41 15 this defendant. It says adequate deterrence to criminal
14:36:44 16 conduct.

14:36:45 17 Those of you who appear regularly when I'm doing
14:36:48 18 sentencings will hear me say I read that to be adequate
14:36:55 19 deterrence criminal conduct by the defendant and others. The
14:36:58 20 others are what worry me here. And I think, as I believe
14:37:04 21 Judge Sparks felt, that a strong sentence should be imposed
14:37:10 22 here because it just violates the bounds of any civil society
14:37:19 23 to not pursue a strong penalty against people who hold hostage
14:37:27 24 and murder three other people.

14:37:32 25 I find the testimony of retired Special Agent Martin

14:37:38 1 to be credible, and I have consider it as such. I observed his
14:37:48 2 demeanor as he was testifying and particularly here when I
14:37:51 3 called him back to the stand. I realize that Mr. Waters may
14:37:56 4 have contradicted himself in some parts just like Mr. Karr
14:38:02 5 contradicted himself in some parts of what he testified to.

14:38:08 6 But I find that what Mr. Waters told Special Agent
14:38:16 7 Martin to be credible because it all fits and comes together to
14:38:23 8 me with regard to the facts that were known and were produced
14:38:29 9 at trial and spoken about at trial. Clearly, there is some
14:38:36 10 corroboration, sketchy though it may be, in that Mr. Waters
14:38:41 11 knew exactly how to go to where the bodies were found and got
14:38:45 12 them there and closed the gap between what Mr. Karr had told
14:38:52 13 them.

14:38:53 14 I realize there is an unanswered question with regard
14:38:59 15 to whether murder of the other accomplice occurred in Dallas
14:39:13 16 County or not in Dallas County. But I don't worry about that
14:39:18 17 too terribly much because the gravamen of this crime was the
14:39:23 18 taking of the O'Hairs, the holding them hostage, and the taking
14:39:29 19 of their money and other valuable items and holding them for a
14:39:34 20 period of time, which as I said in discussing the situation
14:39:39 21 regarding the objections, the passage of time, every day that
14:39:47 22 went by, made it more and more likely that the end result would
14:39:54 23 be what the end result was.

14:39:57 24 And whether Mr. Waters was 100 percent correct or
14:40:03 25 truthful in what he told Special Agent Martin, it fits together

14:40:09 1 with what was learned before then. He was somebody who was
14:40:15 2 there, and I find that to be credible and consistent with the
14:40:28 3 rest of the testimony.

14:40:28 4 I address the situation with regard to avoiding
14:40:38 5 unwarranted sentencing disparities that's in Section 3553, and
14:40:40 6 it is something that I always consider carefully. But there's
14:40:47 7 always going to be some nature of disparity. I might not, had
14:40:53 8 I been the investigator or the prosecutor, cut the same plea
14:40:59 9 deal with Mr. Waters that was cut in this case. But the fact
14:41:05 10 of the matter is that it was cut.

14:41:09 11 I don't find, just because -- well, I find that the
14:41:15 12 government makes different arrangements with different
14:41:19 13 defendants involved in the same offense from time to time, that
14:41:24 14 the Court must look carefully at that to avoid unwarranted
14:41:27 15 sentencing disparities, but let me note that an operative word
14:41:32 16 is "unwarranted." Sometimes the disparity is warranted, and
14:41:37 17 sometimes the disparity is warranted in order to obtain
14:41:41 18 additional information.

14:41:45 19 Whether or not Mr. Waters received too good a deal I
14:41:51 20 do not pass on because the fact of at the matter is it turned
14:41:56 21 out to be life in prison because he died when he was in custody
14:42:00 22 before he was released from any of the sentences, whether the
14:42:04 23 state sentence was going to be much below sixty years or
14:42:09 24 whether it was not.

14:42:11 25 As I said, in ruling on the objections, I take very

14:42:17 1 seriously the fact that there virtually is no limitation on
14:42:22 2 what the Court considers at sentencing under Title 18,
14:42:27 3 Section 3661, and so I've tried to examine everything here.

14:42:32 4 What I keep coming back to is, even though Mr. Karr I
14:42:38 5 think has been extremely well represented by the lawyers who
14:42:42 6 have been appointed to represent him, the crime, as I said
14:42:46 7 before, is as serious today as it was the day it was committed
14:42:51 8 and was as serious today as it was the day of the original
14:42:57 9 sentence.

14:42:58 10 So when I take everything into account, in spite of
14:43:06 11 good lawyering on both sides here, I do find that a guideline
14:43:10 12 sentence would be an appropriate sentence to impose in this
14:43:12 13 case, tailored to meet the facts and circumstances of this
14:43:16 14 defendant's background and the offense for which he has been
14:43:19 15 convicted; that a guideline sentence adequately accounts for
14:43:23 16 all of the factors in Title 18 of the United States Code,
14:43:29 17 Section 3553, all of which I have carefully considered but have
14:43:36 18 not specifically mentioned every one of those factors; and that
14:43:40 19 a guideline sentence would be a reasonable sentence to impose
14:43:42 20 in this case.

14:43:45 21 Therefore, pursuant to the Sentencing Reform Act
14:43:48 22 of 1984, it is the judgment of this Court that you,
14:43:51 23 Gary Paul Karr, are hereby committed to the custody of the
14:43:54 24 Bureau of Prisons for a term of 240 months on count one --
14:44:00 25 pardon me -- on count two and 240 months on count three, to be

14:44:05 1 served consecutive to each other and consecutive to the
14:44:11 2 sentence previously imposed as to counts four and five, for a
14:44:18 3 total sentence of 595 months. That takes into account the two
14:44:26 4 240-month sentences for 480 months and the 115-month term that
14:44:36 5 was previously imposed on counts four and five.

14:44:39 6 Upon release from imprisonment, you shall be placed
14:44:41 7 on supervised release for a term of three years on counts two
14:44:43 8 and three, to be served concurrently.

14:44:48 9 Within 72 hours of release from the custody of the
14:44:50 10 Bureau of Prisons, you shall report in person to the probation
14:44:54 11 office in the district to which you are released.

14:44:56 12 While on supervised release, you shall not commit
14:44:58 13 another federal, state, or local crime, and you shall comply
14:45:01 14 with the mandatory and standard conditions adopted by this
14:45:04 15 Court on November 28th, 2016, which include, in part:

14:45:11 16 You shall apply all moneys received from income tax
14:45:14 17 refunds, lottery winnings, judgments, and other anticipated or
14:45:19 18 unexpected financial gains to any court-ordered financial
14:45:23 19 obligation that has not be paid.

14:45:27 20 Second, you shall participate in a mental health
14:45:29 21 treatment program and follow the rules and regulations of that
14:45:32 22 program. A probation officer, in consultation with a treatment
14:45:39 23 provider, may supervise your participation in the program. You
14:45:43 24 shall pay the costs of that treatment to the extent you are
14:45:45 25 financially able. You shall take all mental health medications

14:45:48 1 that may be prescribed by any physician who is treating you.

14:45:55 2 It is further ordered that you shall make restitution
14:45:57 3 in the amount of \$543,665.42 as follows:

14:46:03 4 To the United Secularists of America, Inc., \$512,000;
14:46:08 5 the estate of Madalyn Murray O'Hair, \$2,500; the estate of
14:46:14 6 Jon Garth Murray, \$26,665.42; the estate of Robin Murray
14:46:21 7 O'Hair, \$2,500.

14:46:25 8 If you are not able to pay this indebtedness or
14:46:29 9 haven't paid it, you shall cooperate fully with the Office of
14:46:31 10 the United States Attorney, the Bureau of Prisons, and the
14:46:35 11 United States Probation Office to make payment in full as soon
14:46:40 12 as possible, including during any period of incarceration.

14:46:44 13 Any unpaid balance at the commencement of a term of
14:46:47 14 supervised release may be paid on a schedule of monthly
14:46:52 15 installment, to be established by the United States Probation
14:46:55 16 Office and approved by this Court.

14:46:57 17 I find that you do not have the ability to pay
14:47:01 18 interest on the monetary penalties that I have ordered in
14:47:04 19 restitution, so I will waive the interest requirement in this
14:47:07 20 case.

14:47:08 21 I find that you do not have the ability to pay a
14:47:11 22 fine; I will waive the fine in this case.

14:47:13 23 I believe we have established in this hearing that
14:47:16 24 the special mandatory assessment of \$100, which is \$50 per
14:47:21 25 count, has now been paid in full.

14:47:24 1 Since you have been in custody since
14:47:26 2 March 15th, 2000, voluntary surrender is not an issue.

14:47:33 3 Mr. Karr, at this time I am handing to the clerk of
14:47:35 4 this court the presentence investigation report prepared by the
14:47:39 5 probation department in this case and to which we have referred
14:47:44 6 during this proceeding. I'm ordering that that report be
14:47:47 7 sealed. That means that no one may come to the district
14:47:49 8 clerk's office and read about you or any member of your family
14:47:53 9 or any of the facts and circumstances surrounding the offense
14:47:56 10 for which you have been convicted and sentenced today which may
14:48:00 11 be contained in that report.

14:48:02 12 However, I wish to advise you that if there is
14:48:04 13 an appeal from the sentence that I have just imposed, both you
14:48:07 14 and the government may use your copies of the presentence
14:48:09 15 investigation report for purposes of appeal, and in that event
14:48:11 16 the presentence investigation report will become part of the
14:48:12 17 record on appeal. Do you understand that?

14:48:14 18 THE DEFENDANT: Yes, sir.

14:48:21 19 THE COURT: You have a right to appeal the sentence
14:48:23 20 that I have just imposed, and in a moment I will be passing to
14:48:28 21 you and your lawyers letters that more fully explain that.

14:48:32 22 However, I wish to tell you at this time that if for
14:48:34 23 any reason you desire to appeal the sentence that I have just
14:48:37 24 imposed or if for any reason you feel you have a right to
14:48:39 25 appeal that sentence, you may only do so if you first file with

14:48:43 1 the clerk of this court within 14 days a written Notice of
14:48:47 2 Appeal. That's a written document called a "Notice of Appeal."

14:48:51 3 If you do not file such a written Notice of Appeal
14:48:53 4 with the clerk of this court within 14 days, you can never
14:48:56 5 appeal the sentence that I have just imposed, and you will
14:48:59 6 forever waive your right to appeal that sentence. Do you
14:49:02 7 understand that?

14:49:02 8 THE DEFENDANT: Yes, sir.

14:49:05 9 THE COURT: Then at this time I am passing those
14:49:08 10 letters to the clerk of this court.

14:49:09 11 Is there anything further to come before the court in
14:49:13 12 this case at this time?

14:49:15 13 MR. HARDING: Nothing from the government, Judge.

14:49:17 14 MR. ALDREDGE: No, Your Honor.

14:49:19 15 MS. WILLIAMS: No, Your Honor.

14:49:19 16 THE COURT: At this time the Court dismisses any
14:49:21 17 pending motions on which the Court has not ruled. You are
14:49:24 18 excused. Good luck to you, Mr. Karr.

14:49:27 19 (End of transcript)

20

21

22

23

24

25

1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States.

10 WITNESS MY OFFICIAL HAND this the 12th day of April 2021.

11

12 /S/ Arlinda Rodriguez
13 Arlinda Rodriguez, Texas CSR 7753
14 Expiration Date: 10/31/2021
15 Official Court Reporter
16 United States District Court
17 Austin Division
18 501 West 5th Street, Suite 4152
19 Austin, Texas 78701
20 (512) 391-8791

21

22

23

24

25

ARLINDA L. RODRIGUEZ, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)